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THE  
PRACTICE  
OF THE  
Court of Chancery.

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C H A P. I.

*Of interrogatories, and commissions to examine.*

**I**Nterrogatories are questions exhibited in writing by the party, plaintiff, or defendant, or directed by the court, to be proposed to and asked of the witnesses in a cause touching the merits thereof, or some incident therein. Also interrogatories are touching contempts of writs, processes and orders of court, whereupon the party offending is to be examined concerning such contempt, &c.

As on hearings upon bill and answer, no evidence is to be admitted (except matters of record) but what arises from the bill and answer itself; so when the parties proceed to the examination of witnesses, the cause is determined by such evidence as arises from the depositions of witnesses examined upon interrogatories. And both the plaintiff and defendant

## Of Interrogatories, and

may ordinarily exhibit interrogatories; for when parties are at issue, it is necessary to consider, as well what the other side may examine unto, as what ourselves can prove, and so counter or cross interrogatories may be prepared, if there be occasion.

Where interrogatories are exhibited in the examiner's office, and witnesses examined thereon, either party may, without application to the court, or order for that purpose, exhibit one or more interrogatories, or a new set of interrogatories, for further examination of the same or other witnesses; but where the commission is taken out for examination, there no new interrogatories, or set of interrogatories, can be exhibited without motion or order of the court. And the reason of the difference was said to be, because the examiner is an officer of credit and sworn, and so presumed to be impartial, and that he will not disclose the depositions to either party; but the commissioners are private persons, and not sworn, and are called the plaintiff's commissioners or defendant's commissioners; and so without leave of the court no new interrogatories can be added before them. *Gilb. 42.*

But this practice is altered by an order made 8 Geo. 1. which enacts, That all commissioners and their clerks, before they act in the commission, shall severally take an oath not to publish or disclose the contents of the depositions to be taken; which oath is to be annexed in a schedule to the commission; and also in all commissions which shall issue to examine witnesses, a clause to that effect is to be added, and made part thereof; and any commissioner or clerk acting contrary to the premisses, on proof of the offence shall be punished as the court shall think fit to adjudge and order.

When the parties have copies of the depositions delivered to them, and come to see the interrogatories exhibited by each side, and find the interrogatories

## Commissions to examine.

tories to be too leading or impertinent, then is a proper time to refer them to a Master for being too leading, impertinent, or scandalous. This is done by motion or petition of course. If the Master reports the interrogatories leading, and this report is not excepted to, then all the depositions taken to these interrogatories must stand suppressed as of course by motion or petition: But if the report is excepted to, as on the one hand the court never countenances leading or impertinent interrogatories, so on the other hand they are not over curious in these matters, because it may fall out, that interrogatories may be reported illegal in the very vital of the examination and on the very point the cause turns; and when this comes to be the case, the party who refers them gains his end; for perhaps he had a very bad cause if the depositions had stood, whereas if they are suppressed he has a very good one, since his adversary must hear the cause without any proof at all; unless the court is pleased to grant him another commission on payment of costs for his leading interrogatories; which is seldom or never done after depositions are published. And it is hard, that in equity a man should be deprived of a plain right through the slip of another man's pen, or the inadvertency or unskilfulness of his counsel penning his interrogatories; and therefore if it is possible for the court to help him they will, from the manifest inconvenience which must attend such a case. Indeed, if interrogatories are reported leading in points upon which the gift of the case does not turn, and, if the depositions in these parts should be suppressed, the party might have evidence left without it, there is no hurt done; but if the life and quintessence of the cause turns upon it, he ought to struggle to the last before his depositions are suppressed.

## 4 Of Interrogatories, and

N. B. New interrogatories were ordered to be exhibited on suppressing the old. In this case the interrogatories, and the depositions of witnesses taken on them, had been suppressed, for that the interrogatories were leading, and then publication passed. And now the court was moved, that a new set of interrogatories might be drawn and settled by the Master, for the examination of this witness, whose evidence was very material, and yet must be wholly lost, if the court would not indulge them this way; and though the practice has been always against it, and it was insisted to be of dangerous consequence; yet one precedent being produced to this purpose, and the interrogatories which had been suppressed were such as might have been drawn by many other counsel, without any apprehension of their being leading; the court, to let in the party to the benefit of this witness's testimony, ordered new interrogatories to be settled by a Master, and put in for his examination over again. *Spence versus Allen, Gilb. 150. Eq. Ca. abr. 232. S. C.*

All interrogatories must be drawn, or perused and signed by counsel; and they are to be short and pertinent, and necessary to the point: They must not be leading, as, *Did you not do, or see such a thing? &c.* If they are such, the depositions taken thereon will be suppressed; and so it is where the interrogatories are too particular, or point to one side of the question more than the other.

They must be ingrossed on parchment with double 12d. stamps, and are to be exhibited before any witnesses examined on either side: And if witnesses are to be examined before an examiner of the court, the interrogatories must be produced before, and left with him at the office: If in the country on a commission, the interrogatories may be exhibited before the commissioners on opening the commission, which is now the general practice.

## Commissions to examine.

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Though it is said that heretofore the interrogatories were always included in the commission. *Vide Ord. Cban. 216, 217.*

When witnesses are examined in court upon a schedule of interrogatories, there shall be no new interrogatories put in to examine the same witnesses: but new interrogatories, by leave of the court, may be exhibited in court for examining new witnesses at any time before publication, notwithstanding there has been a joint commission executed in the country. And on a *supplemental bill*, the court will, upon motion, give leave to add to the first interrogatories, so as the new interrogatories contain nothing but what relates to the supplemental matter. *Ord. Cban. 226.*

No re-examination of witnesses is allowed, tho' upon the same interrogatories, without leave of the court: but if either party have a commission *de novo*, after he hath examined on a former, he must examine on the same interrogatories as were exhibited by him on the former commission; and no other interrogatories can be admitted without an order, or consent of parties.

If leave is given to examine a witness after publication, and before hearing, a Master is commonly ordered to settle the interrogatories, and that they may be to such points only as were omitted before, and as are now ordered to be examined unto; unless it be merely to prove an exhibit, and the interrogatory was before filed.

And all interrogatories for proving particular points needful upon a reference to a Master, shall be directed by the Master, and shall be to such points only.

And though, by the orders of the court, the parties are to make their full proof before publication and hearing of the cause; yet after hearing, if there be a reference to a Master for the stating an

## Of Interrogatories, &c.

account, or such like matter, and he shall find any particular points and circumstances needful to ground his report upon, which are not fully proved, nor could properly be examined to before the hearing of the cause, he may direct the parties to draw interrogatories to such points or circumstances only ; and such witnesses are usually examined before such Master upon such interrogatories, if the witnesses be or reside within ten miles of *London* ; but if farther off, and the parties desire it, he may by his certificate direct a commission into the country, which is to be made out by the plaintiff or defendant's clerk that desire such commission : and on the return of such commission, publication shall forthwith pass according to the course of the court. *Vide Ord. Chan. 156.*

But the more common way now is, not to examine to a matter of account before hearing, but after, before a Master, if the witnesses be in town or near ; if not, then by commission to be directed by the Master upon his certificate. And either party may examine witnesses to an account, or to a particular thing, after hearing.

In case of a prosecution of a contempt for breach of an order of court, or otherwise grounded upon an affidavit, the interrogatories shall not be extended to any other matter than what is comprehended in the said affidavit or order. And if any other shall be exhibited, the party examined may for that reason demur unto them, or refuse to answer them.

*Commission*

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### Commission to examine. (a)

**T**HIS writ is either to examine the parties, or witnesses; or others, as contemners, &c.

A commission to examine witnesses is sometimes to examine them to the cause, i. e. as to the merits thereof, or to some particular point in question; or it may be to examine them touching a contempt, or the breach of some order of court, &c. Examination to the cause is generally before hearing, tho' sometimes it may be after hearing, as upon an account referred to a Master, or upon new matters arising at the hearing.

A commission is also often had to examine witnesses *in perpetuam rei memoriam*, touching which see hereafter, p. 22; and also *vide ante Bills*.

At other times it is to examine witnesses beyond sea, and then, if they be foreigners or natives, to examine them on their oaths, and the oaths of skillful interpreters.

And when each commission is executed, one of the commissioners, or person that received it from one or more of the commissioners, must deliver the commission executed into the Master's public office here in *England*, and make the usual oath, *that he received it from the bands of one or more of the commissioners, and that the same hath not been open'd nor alter'd since he so receiv'd it*. But if one of the commissioners brings over such commission, he need make no oath, but the plaintiff or defendant's clerk in court only indorses the day, month, and year, on such commission, and underneath writes, *By the bands of A. B. one of the commissioners*.

Though a cause be only matter of account, which may be, and generally is, examined to after hearing; yet where a defendant desires a commission before hearing, the court always grants it, as being what he has a right unto.

(a) The course of the court is, that where an account must necessarily be directed at the hearing, a commission shall not be granted before the hearing to examine witnesses beyond sea when it will delay the account directed; and the proper time to apply for such commission is, after the account directed.— It was refused though the party consented to go to hearing at the same time as if the commission had not been granted. Barnard. Rep. in Chanc. 393.

## Of Interrogatories, and

And though this commission to examine witnesses is not ordinarily to be granted till the cause be at issue; yet if a witness be very aged or sick, upon making an affidavit thereof, the court will sometimes order it *de bene esse* even before answer.

After you have joined and struck commissioners names with the defendant's clerk in court, you proceed to make out a joint commission to examine; but if the defendant's clerk in court fails to join and strike commissioners names, being served with an order and *subpæna* to rejoin, for that purpose, you may then make out a commission *ex parte*, directed to your own commissioners; in which case no notice of its execution need be given to the other side.

But if the defendant rejoins *gratis*, or the parties go to commission by consent, there needs no *subpæna* to rejoin.

The first taking out and carriage of the commission is regularly the privilege of the plaintiff; but the court will sometimes indulge the defendant with a *duplicate*, because in case the plaintiff refuses to give notice of the executing thereof, and does not intend to execute it; then the defendant may make use of his *duplicate*, and proceed to examine witnesses by virtue thereof: And this *duplicate* is the rather granted if it is doubtful whether the plaintiff will execute his commission or not; and more especially if he be forced on by the defendant, as in an injunction cause, where delay is only designed: And sometimes this *duplicate* is granted by consent.

If the witnesses for the defendant live far distant from the plaintiff's as sixty or eighty miles, or beyond the seas, where the plaintiff hath none; in this case the defendant may have a commission for examining his witnesses only, and have the carriage thereof: But the plaintiff may join in such commission, and cross examine the defendant's witnesses

on

## Commissions to examine.

on the plaintiff's interrogatories, or examine what other witnesses he pleases on such commission; but

If when a cause is at issue, the plaintiff will not go on to commission, the defendant may by order have a commission to examine his own witness, and shall have the carriage thereof. And so if the plaintiff commit any abuse in the execution of the first commission, the defendant shall have the carriage of the second.

Also where a commission lost, by the fault of him who had the carriage of it, is renewed, the other side sometimes hath the carriage of it.

Observe, That the examiners have a right to examine all witnesses in town, or within ten miles of the town, which is the circuit of the court; and if any commission be made, or witness examined within that district, the depositions taken by commission will, upon complaint, be suppressed, and the clerk who made out the commission will stand committed for a misbehaviour, and a breach of the known duty of his office.

No commission can be executed in Term-time,  
unless by leave of the court, or by consent.

All commissions for examination of witnesses are to be made returnable on one of the returns in or before the Term, unless where the parties agree to have it *without delay*, or an order is obtained for that purpose. See *Moseley*, 176.

He who has the carriage of the commission must give fourteen days notice under his commissioners hands of the time and place for executing the commission; and such notice must be given to all the defendants, who join in such commission; otherwise it is not good notice, and the depositions may be suppressed for irregularity. But personal notice is not necessary: and in default of notice the court will grant the other side a new commission, or in case

## Of Interrogatories, and

case of the plaintiff's refusing to give notice, the defendant having a duplicate may use it. And if notice is directed to be given to a person you cannot find, then on affidavit thereof and filing it, you may on motion or petition obtain an order for a Master to appoint time and place.

If two of the plaintiff's commissioners attend at the time and place appointed, they may proceed therein *ex parte*, though the defendant's commissioners fail to attend; but if the defendant's commissioners attend, and not the plaintiff's, they cannot go on; because the plaintiff, having the carriage of the commission, will not produce it, if he is disappointed of his commissioners; which makes a duplicate thereof more necessary, for then the defendant's commissioners may proceed in executing the duplicate.

But where no duplicate is, but defendant's commissioners attend at the time and place appointed, and not the plaintiff's, the defendant is to have costs, occasioned by the defendant's commissioners and witnesses attending at the place appointed; and the court will permit him to sue out another commission, and order him the carriage thereof.

Where one commissioner met on each side, and the plaintiff's commissioner went away without doing any thing, whereby the commission was lost, the court ordered the plaintiff to pay the defendant his costs, and granted a new commission, and the defendant the carriage thereof; for one commissioner on a side is sufficient, and one at least on each side must attend.

The commission being opened and read, both parties are then obliged to exhibit their interrogatories, if they intend to examine any witnesses: And the interrogatories on both sides are to be signed by all the commissioners then present; and consequently if

## Commissions to examine.

if the plaintiff exhibits his interrogatories, and the defendant neglects to exhibit any, and his commissioners attend the execution of the commission, whereby they have an opportunity of seeing and hearing every thing that is proved on the plaintiff's part, and yet perhaps all this while they have exhibited no interrogatories; and after all this it often falls out, that the defendant moves the court for a new commission, upon suggestion that he had no opportunity of examining his witnesses at the last commission; and if it shall appear by affidavit or certificate of the plaintiff's commissioners, that the defendant's commissioners attended during the whole time of the execution of the commission, and never exhibited any interrogatories; in this case the court will, but very rarely, and that upon special circumstances, grant the defendant another commission. *Vide 1 Chan. Ca. 274.* But if he has put in interrogatories, and his commissioners attend without examining any witnesses, the court may grant or deny him another commission, as the circumstances on the affidavit of the commissioners shall appear; his commissioners ought to withdraw, and care must be taken, if new commission is granted, that neither party add to, nor alter their interrogatories: they must examine to the old interrogatories exhibited at the former commission, and are not to add new ones without the special leave of the court; and then they are to be settled by the Master, and are never suffered but in extraordinary cases, and the party praying this commission must pay all the charges thereof, unless the other side examines any witnesses of his own; in which case he is to bear the part of the charge.

If notice be given of executing the commission, and at the day appointed the commission is opened, but nothing done thereupon, nor any adjournment

made,

## Of Interrogatories, and

made, the commission is lost, except the other side agree to adjourn, or to take new notice: but if the commission be not opened, and he who has the carriage thereof gives new notice, and then executes it, this is a sufficient execution, unless in the mean while the other side obtain and serve an order to stay proceedings till the costs of the former attendance of the defendant's commissioners and his witnesses be paid, and that they are not paid.

It is usual, when an adjournment is made, to make a memorandum thereof, which the commissioners are to sign.

If by default of him that has the carriage of the commission nothing is done thereon, he shall bear the charges the other side is put to about it, either for fees of court, bringing or retaining commissioners or witnesses, or otherwise, to be ascertained by the oath of the party, or him that disbursed the money for him, and shall renew the commission at his own costs. *Ord. Chan. 132.*

Where a commission is lost by the fault of him who had the carriage of it, and is renewed, the other side commonly hath the carriage of it.

And if a commission become void by the error of the clerk in making it, the costs, I think, shall generally be born by him and that side for whom it was taken out, and who had the carriage of it.

After due notice has been given, if the one side produces and examines all his witnesses, and the other side does not, but prays a new commission; if it be granted, he that prays it shall bear all the charges of such renewed commission, both in the court and in the country, and as well for the other's commissioners as his own; and the other side shall be permitted to cross examine the witnesses produced by him that renews the commission. But if the other side will examine any witnesses of his own, then

then he shall bear his own part of the charge. The charges abovementioned to be ascertained by the oath of the party, or of him who disbursed the money for him. *Ord. Chan.* 132.

He, at whose instance a commission is renewed after a former commission executed and returned, and he by the default of whom, or of whose commissioners, a former commission was not executed, and it is thereupon renewed, shall at his peril examine all his witnesses on that renewed commission, or shall examine them in court by the end of the Term it is returnable, without any more or further delay. *Ord. Chan.* 133.

Proceed we now to instance some particular cases proper to be taken notice of under this head.

After the defendant has been examined on interrogatories, and publication passed, the plaintiff ought not to have a commission to examine witnesses in order to falsify the defendant's examination; this tending to multiply causes, and to make them endless. *3 P. Will. Rep.* 413. *Smith v. Turner.*

If a defendant is to perfect his answer upon interrogatories, or to be examined for a contempt, although the rule of court be, that he shall be examined in four days, or stand committed; yet if the party be in the country, he shall have a commission to take his examination. *1 Vern.* 187.

A new commission will be granted, if exhibits or writings are alter'd or interlin'd. *Hill.* 25 *Car.* 2. *Richardson and Lawther,* 1 *Chan. Ca.* 273.

But where a witness alledged that he had mistaken himself at a commission; the commission being returned, he came to *London*, and made an affidavit that he was surprized; upon which a special commission issued to re-examine the witnesses, which was done accordingly: but this special commission was suppressed by motion, by advice of the Master of the Rolls with the Six clerks, as contrary to the

## Of Interrogatories, and

(a) But the present practice is, to obtain an order, on motion and affidavit of surprise, to have the witnesses examined *viva voce* in court, or his depositions amended, the witnesses being first examined before an examiner; but when he is examined in court, or when his depositions are read, the order for that purpose must be produced in court.

If after publication any new matter arises upon debate, or hearing the cause, which may be thought material by the court, a new commission may be granted. 2 *Chanc. Ca.* 75.

A commission may be had to examine witnesses beyond sea; and if foreigners, to examine them upon their oaths, and also the oaths of skilful interpreters. In this case, when it is apprehended the returning by a commissioner, or by some person that can make affidavit of the true keeping of it, will be too great delay, the court sometimes has ordered that a commission be delivered by a Master to send by the post, and that he receive the same back when it is executed, by the post, if it be returned; otherwise one of the commissioners personally delivers the commission to the person that brings it to *England*, to the intent that when arrived here, he may take the usual oath, *viz.* That he had it from the hands of one of the commissioners, and that the same has not been opened or altered.

A general affidavit of having material witnesses beyond sea, is not sufficient for a new commission; but the witnesses must be named in the affidavit; and the point mentioned to which they can materially depose. 1 *Vern.* 334.

The ground for granting a commission beyond sea to examine witnesses, must depend upon the special circumstances of the case.

Where there shall be said to be sufficient circumstances arising from the nature of the case, upon which

## Commissions to examine.

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which a commission for examining witnesses beyond sea ought to be granted, *vide Barnard.* 193, 194.

If commissioners misbehave themselves, the court will grant an attachment against them; but regularly a commission cannot be suppressed, but upon a reference and certificate of irregularity. *Cary 43.*

If commissioners misbehave themselves, or if the commission is executed contrary to notice, or not due notice given, or the depositions returned are so badly ingrossed, or interlined, that they are not legible; in this and many other cases of the like nature there may be good reason to suppress the depositions; but in this last case the record or ingrossment of the depositions is brought into court by the proper officer, and the court takes the ingrossment into their hands; and if it is possible to be read, or if being handed down to the clerk he can read it, they will hardly suppress the depositions, and put the party to new trouble of examining over again.

A commissioner may be examined as a witness; but then he must be first examined; and if others be examined before him in his presence, he cannot be examined afterwards, having heard the former depositions; and for that reason a commissioner was examined in court, his former déposition being suppressed. *2 Chan. Ca. 79.* But after he is examined, he may then join, and proceed in executing the commission.

When a commission is returnable *without delay*, if it be within this kingdom, [if made out in the Vacation-time at any of the seals after the Term] it must be returned by the second return of the next Term; if executed afterwards, it is void, and the depositions ought to be suppressed. *2 Vern. 197.*

But observe, that if a commission be made out the first or second seal before the Term, or the first day

## Of Interrogatories, and

day of Term, returnable without delay, the same return holds good to the end of that Term.

### *A commission to examine witnesses.*

Commission  
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but by order  
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nor within  
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the circuit of  
the court,  
and so with-  
in cogni-  
zance of the  
examiner.  
*Gib. Hist.*  
*Chanc.* 128.

**G**EORGE the third, &c. To —— greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you, as well on the part of *A.B.* complainant, as on the part of *C.D.* defendant, or of either of them; and therefore we command you, any three or two of you, that at certain days and places to be appointed by you for that purpose, you do cause the said witnesses to come before you, and then and there examine each of them apart upon the said interrogatories, on their respective corporal oaths first taken before you, any three or two of you, upon the Holy Evangelists, and that you do take such their examinations, and reduce them into writing on parchment; and when you shall have so taken them, you are to send the same to us in our Chancery—wheresoever it shall then be, closed up and under your seals, or the seals of three or two of you, distinctly and plainly set, together with the said interrogatories, and this writ. And we further command you, and every of you, that, before you act in or be present at the swearing or examining any witness or witnesses, you do severally take the oath first specified in the schedule hereto annexed; and we do give you, any three, two, or one of you, full power and authority, jointly or severally, to administer such oath to the rest, or any other of you, upon the Holy Evangelists. And we further command, that all and every the clerk or clerks, employed in taking, writing, transcribing or ingrossing

the

## Commissions to examine.

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the deposition or depositions of witnesses to be examined by virtue of these presents, shall before he or they be permitted to act as clerk or clerks, as aforesaid, or be present at such examination, severally take the oath last specified in the said schedule annexed: And we also give you, or any one of you, full power and authority, jointly and separately to administer such oath to such clerk or clerks upon the Holy Evangelists. Witness ourself at *Westminster*, the —— day of —— in the —— year of our reign.

Here put the surnames of the Master of the Rolls, and the Six clerks. Indorse on the back of the writ towards the top, *By order of court.*

The oaths annexed to the said commission are on unstamp'd parchment; but the commission has a treble six-penny stamp.

### *The commissioner's oath.*

Y  
OU shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced, and left with you. And you shall not publish, disclose or make known, to any person or persons whatsoever, except to the clerk or clerks by you employed and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the high court of *Chancery*. —

*So help you God.*

## Of Interrogatories, and

### *The clerk's oath.*

**Y**OU shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and ingross the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take, write down or ingross the said depositions, or any of them. And you shall not publish, disclose or make known, to any person or persons whatsoever, the contents of all or any of the depositions of the witnesses, or any of them, to be taken, wrote down, transcribed or ingrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the high court of Chancery.—*So help you God.*

### *A commission to examine a defendant touching a contempt.*

**G**EORGE the third, &c. To A. B. C. D. E. F. greeting: Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, in pursuance of an order of our court of Chancery, bearing date the — day of — last past, made in a certain cause there depending, wherein A. B. is complainant, and C. D. defendant, diligently to examine the said defendant upon interrogatories inclosed in these presents touching a contempt supposed to be by him committed: And therefore we do command you, any three or two of you, that at a certain day and place to be appointed by you for that purpose, you do cause the said defendant to come before you, and then and there examine him upon the said interrogatories

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rogatories on his corporal oath first taken before you, any three or two of you, upon the Holy Evangelists, and that you do take such examination, and reduce it into writing on parchment: And when you shall have so done, you are to send the same to us in our *Chancery* — wheresoever it shall then be, closed up and under your seals, or the seals of two or three of you, distinctly and plainly set, together with the said interrogatories, and this writ. Witness ourself at *Westminster*, the — day of — in the — year of our reign.

### *Commission to take a defendant's examination on interrogatories.*

**G**EORGE the third, &c. To —— greeting: Know ye, that we have given unto you, any three or two of you, full power and authority, in pursuance of an order of our court of *Chancery*, bearing date the — day of — made in a certain cause there depending, wherein *A. B.* is complainant, and *C. D.* defendant, to take the examination of the said *C. D.* defendant, upon interrogatories inclosed in these presents: And therefore we command you, any three or two of you, that at such certain day and place, as you shall think fit, you go to the said defendant, if he cannot conveniently come to you, and take his examination to the said interrogatories, on his corporal oath upon the Holy Evangelists, to be first administred by you, any three or two of you; the said examination being distinctly and plainly wrote upon parchment; and when you shall have so taken the said examination, you are to send the same closed up, under the seals of you, any three or two of you, together with the said interrogatories, and this writ, unto us in our said court of *Chancery* — wheresoever it shall then be. Witness ourself at *Westminster*, the — day of — in the — year of our reign.

## Of Interrogatories, and

*A commission to examine witnesses and divide lands.*

GEORGE the third, &c. To —— greeting: Know ye, that we have, pursuant to an order of our court of Chancery, bearing date the —— day of —— last past, made on the hearing of a certain cause, wherein S. H. widow, and M. H. are plaintiffs, and Sir W. H. Bart. and W. W. Esq; are defendants, fully authorized and empowered you, or any two or more of you, to go to, enter upon, walk over, and survey the manors of T —— U ——, and E —— H. R —— and E —— H ——, in the county of —— in the complainant's bill of complaint particularly mentioned, and the same to separate, set apart, and divide into three equal parts; and to allot and appoint two third parts of the said T —— and R —— estates to the plaintiff S. H. and the other third part thereof to the defendant W. W. and to allot and appoint one third part of the said H. estate to the plaintiff S. H. another third part thereof to the plaintiff M. H. and the remaining third thereof to the defendant W. And for the better making such divisions, to examine witnesses touching the values of the said several estates, upon such interrogatories to be exhibited to you, as you, any two or more of you, shall think proper, to discover and make out the truth of the premisses. Therefore we command you, any two or more of you, that you meet together at certain days and places by you for this purpose appointed, and from thence go to, enter upon, and walk over, and survey the said manors, lands and premisses; and that you do also cause the said witnesses to come before you, and then and there examine each of them apart, upon such interrogatories, upon their respective corporal oaths first taken before you, any two or more of you, upon the Holy Evangelists; and that you do take such their examinations

nations and reduce them into writing on parchment: And that you, any two or more of you, do separate, set apart, and divide the said premisses into three equal parts, and do allot and appoint two third parts of the said *T* — and *R* — estates to the plaintiff *S. H.* and the other third part thereof to the defendant *W. W.* and to allot and appoint one third part of the said *H.* estate to the plaintiff *M. H.* and the remaining thereof to the defendant *W.* And when you shall have so done, you, or any two or more of you, are to certify and return into our said court of *Chancery*, without delay, wheresoever our said court shall then be, your facts and proceedings in the premisses, by your certificate, distinctly and plainly wrote upon parchment, together with the said examinations and interrogatories, closed up, and under your seals, or the seals of any two or more of you, distinctly and plainly set, together with this writ. Witness ourself at *Westminster*, &c.

*Commission to assign and set out dower.*

**G**EORGE, &c. To — greeting: Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority, in pursuance of an order of our court of *Chancery*, made in a certain cause there depending, wherein *A. B.* is complainant, and *C. D.* defendant, bearing date the — day of — last, to assign and set out dower for the aforesaid complainant, out of all and singular the lands and tenements, being lately the estate of — deceased, in the said order mentioned, called — : And therefore we command you, any three or two of you, that you meet at a certain time and place to be appointed by you for that purpose, in order to come unto, inspect and view the aforesaid estate, lands and premisses, wheresoever they shall be found to be situate, lying or being; and, according to the best

## Of Interrogatories, and

of your skill and judgment, to assign and set out dower for the said complainant, out of the aforesaid farm, lands and premises; and doing in all and singular the premises, according to the true intent and meaning of these presents and the aforesaid order: And when you shall have thus done, that you transmit unto us in our said court of Chancery, wheresoever it shall be, your certificate concerning the said complainant's dower, ingrossed on parchment, together with your other proceedings in the premises, as is usual, with this writ. Witness, &c.

### *Of commissions to examine witnesses.*

**N**OTICE of executing a commission is sometimes served on the clerk in court, if signed by the clerk in court; or may be served upon the solicitor in town or country, as the parties can agree. If the parties are willing, short notice may be given.

Peers of the realm, as well as others, are to give their testimony upon oath.

A witness was examined upon a commission, swears reflecting words, yet he ought not to pay any charges, it being none of his fault, but the commissioners and their clerks fault to take down that part of the deposition. 2 P. Will. Rep. 406.

A commission returnable without delay must be executed, if within the kingdom, by the second return of the next Term, else void, and the depositions to be suppressed. 2 Vern. 197.

There must be a label to all commissions to this effect:

To (naming the commissioners) A commission empowering you to examine witnesses, as well on the part of A. B. complainant, as on the part of C. D. defendant; or either of them, returnable without delay, on fourteen days notice to the defendants.

Forescue. Collins.  
When

## Commissions to examine.

23

When the commission is obtained on the part of the defendant, and the plaintiff joins therein, the words of the commission and label are — As well on the part of C. D. defendant, as on the part of A. B. plaintiff, or either of them.

If it be an *ex parte* commission, then, if obtained by the plaintiff, the words are — On the part of A. B. complainant, against C. D. defendant, &c.

The plaintiff, two days before the execution of a commission to examine, was arrested by the defendant, and was in execution, but was ordered to be discharged, and the defendant ordered to pay costs, and be at the charge of a new commission. *MS. Cas.*

Proceedings upon the execution of a commission to examine witnesses *in perpetuam rei memoriam*, are the very same as upon a general commission. *Id.*

Witnesses to be paid their expences and for their trouble by party who produces them. *Gilb. Hist. Chanc. 138.*

*Note:* A witness may be allowed to use short notes, which he brings with him to help his memory; though not the substance of the depositions; nor may he transcribe *verbatim* such notes. And the commissioners ought not to ask any *idle* questions, or such as are foreign to the interrogatories, nor set down impertinent answers, but only what are material on the points interrogated.

*The form of a notice of executing a commission given by a clerk in court.*

BY virtue of a commission issued out of his Majesty's high court of Chancery, directed to certain commissioners therein named, for the examination of witnesses in a certain cause depending in

## Of Examination of

the said court, between, &c. This is to give you notice, that the said commissioners intend to execute the said commission on Monday the — day of — next at — o'clock of the clock of the same day, at the house of, &c. where the commissioners may be present, if they please. Dated, &c.

A. B.

To D. C. (to whom notice is agreed to be given.)

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## C H A P. II.

### *Of examination of witnesses, evidence, witnesses, and proofs.*

**W**HEN the commissioners have received the commission, they must give notice in writing, to the other side, of the time and place of executing it, in the following form, *viz.*

#### *Notice of executing a commission.*

**W**HEREAS we have received a commission issuing out of his Majesty's high court of Chancery, to us, and, &c. directed for the examination of witnesses in a cause there depending, between A. B. plaintiff, and C. D. defendant: These are to give you notice, that we will execute the said commission on the behalf of the plaintiff, at the house of, &c. known by the sign of, &c. situate in, &c. in the county of — on — being the — day of — next ensuing, at the hour of — o'clock in the forenoon of the same day, when and where you, and your commissioners and witnesses concerned, may be present, if you please. Given under our hands, this — day of, &c.

To Mr. C. D.

E. F.

G. H.

This

This notice is to be delivered to the party, or left at his house with his wife, or servant, \* fourteen days before the time of executing the commission, as has been before observed, (except a shorter time be appointed by order of court, which very seldom is done) or the depositions shall be suppressed. And the witnesses are also to be served with a summons to appear before the commissioners at the time and place, to depose their knowledge to each interrogatory; which summons is in this form:

\* But where it is a short vacation, as between Easter and Trinity Term, ten days, or less, is good notice.

*A summons for witnesses to appear before the commissioners to be examined.*

Between A. B. plaintiff,  
C. D. defendant.

*In Chancery.*

WHEREAS we have received a commission issuing out of his Majesty's high court of Chancery, &c. (*ut supra*) And whereas we are informed, That you, whose names are hereunderwritten, are material witnesses for the plaintiff (or defendant) in this cause: These are therefore, by virtue of the said commission, to will and require you, and every of you, personally to be and appear before us, or any three or two of the said commissioners at the house of, &c. known, &c. in, &c. on the — day of — next, then and there to be examined, and to testify your knowledge for and on behalf of the plaintiff (or defendant); and you are then and there to attend, and not to depart until you have been examined on the part of the said plaintiff: And herein you are not to fail. Given under our hands, &c.

To N. M. P. R. S. T.  
W. E. &c.

E. F.  
G. H.

But

## Of Examination of

But if a witness be unwilling to come, you must get a *subpæna ad testificandum* sealed, and serve him therewith, and deliver him one shilling with the *subpæna*, and at the same time the commissioners summons, as before; and if the witness so summoned and served does not appear, the court will grant an attachment against him, unless he comes up at his own expence to be examined before the examiner; or if he be summoned by the commissioners without a *subpæna ad testificandum*, and do not appear, the court will order such witness to attend at his own expence, and to be examined; and if he disobey such order, then an attachment shall go against him.

The commissioners and witnesses being met together, at the time and place appointed, according to the notice; the commission (which till that time must remain sealed) may be opened, that the commissioners may see their authority; and then they are to administer the *oath* to each other, and also the *oath* to the clerks, annexed to the commission, as aforesaid.

After the oaths are administered, the commissioners and their clerks begin to execute the commission; and having before them the interrogatories both for the plaintiffs and defendants, the commissioners present must sign their names at the bottom of both the interrogatories; and then one of the commissioners, or clerks, draws up the stile or title of the depositions, preparatory to the examination of the witnesses, in paper, usually thus:

On the be-  
half of the  
plaintiff.

*Depositions of witnesses produced,  
sworn, and examined on the \_\_\_\_\_  
day of \_\_\_\_\_ in the \_\_\_\_\_ year of  
the reign of his Majesty King George  
the third, and in the year of our Lord  
1767, at the house of A. B. known by  
the sign of the \_\_\_\_\_ situate in the  
parish*

parish of C. in the county of D, by virtue of a commission issuing out of his Majesty's high court of Chancery, to us E. F. G. H. J. K. and L. M. directed, for the examination of witnesses in a cause there depending between A. B. plaintiff, and C. D. defendant, on the part and behalf of the plaintiff: We the said Commissioners, also the respective clerks by us employed for taking and ingrossing the said depositions, having first taken the oaths annexed to the said commission as thereby required.

Then the commissioners call a witness before them, and cause all persons, but themselves and their clerks, and that witness that is to be examined, to leave the room, and then they administer to the witness his oath.

One of the commissioners taking the interrogatories, and producing them to the witness that is to be examined thereto, administers the oath to such witness, as followeth: The commissioners may read the title of the interrogatories to such witness, and then say, *You are true answer to make to all such questions as shall be asked you upon these interrogatories, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth.*

*So help you God.*

The oath being administered, the witness's name and place of abode, addition and age, are to be writ in the same paper, under the title *Of the depositions, &c.* And the commissioners must themselves examine the witnesses on the interrogatories, and not leave it to their clerks; wherein they are to examine but to one interrogatory at a time, and shall not

## Of Examination of

not read to the witnesses another interrogatory till they have gone through and answered the former: And the commissioners shall likewise take down what comes from the witnesses on their examination, and not permit them on their own reading of the interrogatories to set it down themselves; but the depositions must be carefully read over to such witness, and if upon such reading any thing is mistaken that the witness cannot swear to, after he has been examined, the depositions must be rectified; which done, the witness must sign his name or mark to such depositions as he is examined to. A witness may be allowed to use short notes which he brings with him to help his memory; though not the substance of the depositions, nor may he transcribe *verbatim* such notes. And the commissioners ought not to ask any *idle* questions, or such as are foreign to the interrogatories, nor set down impertinent answers, but only what are material on the points interrogated.

If any practiser, or other person, goes about to tamper with, or suborn any witness, upon complaint made thereof, and upon examination of the matter upon oath, he must stand committed. *Gilb. Hist. Chanc.* 143.

If one commissioner obstructs another in his duty, or examines irregularly, he may certify such behavior to court\* without † affidavit.

The names and additions of the witnesses, &c. and their depositions or answers, are thus put down:

A. B. of —— in the county of —— gent. aged — years and upwards, being produced, sworn and examined on the behalf of the plaintiff (or defendant) deposeth as followeth :

\* *Gilb. Hist. Chanc.* 128.

† If complaint is made by party injured, the same must be supported by affidavit, or court will not notice it.

Imprimis,

Imprimis, To the first interrogatory this deponent saith, That, &c.

Item, To the second interrogatory this deponent saith, &c.

And so proceed through the rest of the interrogatories.

If a commission be adjourned to another day and place, and witnesses are examined, the time and place where such examinations were taken, ought to be mentioned and set down in the title of the respective depositions.

If there be any writings directed by the commission to be proved, the commissioners are to give directions to bring them in for that purpose; and after they are proved, exhibits may be made of them.

And the exhibits must be indorsed after the following manner:

Between A. B. plaintiff, and C. D. defendant, Dec. 1767. At the execution of a commission for examination of witnesses in this cause, this deed or parchment, or paper writing was produced and shewn to E. F. and by him depos'd unto at the time of his examination to the third interrogatory on the plaintiff's part, and was also produced and shewn unto, &c. and by him depos'd, &c. before us,

E. F.  
G. H.

When the witnesses are examined, the depositions are to be ingrossed on parchment, in like manner as the interrogatories, and examined carefully with the paper draughts; after which the commissioners sign such schedule or skin of parchment of the examinations, and also the interrogatories, and then bind them

## Of Examination of

them up together with the commission, usually (called making up the commission) with some red tape or other string, setting all their names and seals upon the same; but before the commission is sealed up, they are to indorse upon the back of the commission towards the middle thereof *The execution*, to which they likewise subscribe their names, as followeth;

*The execution of this commission appears  
in a certain schedule (or schedules) to this  
commission annexed.*

E. F.

G. H.

When the commission is executed and made up, the paper draught is to be also sealed up as above, and delivered to one of the commissioners to keep; and sometimes it is cut in two in the middle, and one part thereof is delivered to one of the plaintiff's commissioners to keep, and the other part is delivered to one of the defendant's commissioners to keep; and the commissioners must deliver the commission, the label thereof hanging out at the end, personally to the person that brings it to town, who is to deliver it to a Master in *Chancery*, or more usually to the clerk in court who had the carriage of the commission, who indorses the same thus:

23d Jan. 1778. Upon the oath  
of L. M. Before —

When a person swears it, he goes before a Master, commonly at the *publick office*, where he makes oath, That he received the commission from the hands of two or more of the commissioners therein named, and that it has not been opened nor altered since he so received it.

But if the commission is carried by one of the commissioners, no oath is required; and you need only indorse,

23d July 1778. Received by the  
hands of E. F. one of the  
commissioners.

The

The commissioners have as fees usually a guinea a day each, and their clerks for ingrossing, &c. such fees as the commissioners commonly settle among themselves, and all charges of eating, drinking and entertainment borne; and the person that carries the commission is usually allowed five shillings for his trouble.

N. B. On delivery of the commission, the examinations or depositions are not to be opened or copied, until publication is actually passed.

Thus much with respect to the examinations of witnesses by *commissioners* in the country; let us consider in the next place of examining witnesses by *examiners in court*.

After replication either side, till publication is past, may examine what witnesses they please in court before one of the examiners.

If a party examines some witnesses in town, and others by commission, he is not obliged to file his whole set of interrogatories in the examiner's office, but such alone as he has occasion for in town; but they must be the same as were exhibited at the commission, or else it would be paying for copies of whole interrogatories twice over.

The examiners office is to examine on oath the witnesses on both sides, that are brought before them, in any cause, and they have a right to examine all witnesses within ten miles of *London*: And if any commission is made out, or witness examined in that district, such depositions will be suppressed on complaint, and the clerk who made out the commission will stand committed for a misbehaviour and breach of the known duty of his office, as happened in Mr. *Snow's* case to one of the clerks, where the commission was executed at a tavern in *Chancery-Lane*.

Where an examiner was committed and discharged from his office for suffering the plaintiff to come up into

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into the room, and answer the person's questions who were examined. *Hosier and Hart, Mosely 321.*

If the witnesses live in town, and you have no occasion to go to commission in the country (or after you have examined some witnesses in the country, and have others to examine in town) then exhibit the interrogatories in the examiner's office, and get a rule entered to produce witnesses; and after they are examined, a rule to pass publication.

If a witness is willing to be examined, and will attend without a *subpæna* served to him, you need only to appoint a time with the examiner, who is to examine him; and then give the witness notice, or attend with the witness upon the examiner, at the time appointed, who will then examine him, after he has been sworn to the interrogatories before a Master, and produced and shewn to the adverse clerk in court, as hereafter.

But if a witness refuses to be sworn willingly upon interrogatories, you must serve him with a *subpæna*, and at the same time deliver him one shilling, and if he refuses to come and be sworn upon such service, you are to make an affidavit of such service of the *subpæna*; which being filed, you then apply to your examiner for a certificate that such witness is not sworn to the said interrogatories: And upon that affidavit and certificate your counsel moves the court, of course, for an order that such witness do in four days after personal service attend, and be sworn and examined to the said interrogatories, or in default thereof he is to stand committed to the *Fleet* prison. *Gilb. Hist. Chanc. 128.* And such witness being personally served with such order, and still refusing to be sworn and examined to the interrogatories, upon affidavit being made and filed of the personal service of the said order, and the examiner's certificate of his not being examined, your counsel moves again, of course, and obtains another order that such witness do stand committed

ted to the prison of the *Fleet*; which order you deliver to one of the tipstaffs belonging to the court of *Chancery*, and he gets a warrant thereon, signed by the Lord Chancellor, and by virtue thereof apprehends such witness, and then carries and delivers him to the Warden of the *Fleet*, and he is to remain in custody not only till he has been examined upon such interrogatories, but also paid the plaintiff his costs he has been put to about him, to be taxed by the Master, besides the Tiptaff's and Warden's fees for taking and detaining him.

The like method is to be taken against a witness who is sworn to the interrogatories, and refuses afterwards to be examined thereupon.

The witnesses or parties to be examined, must be first sworn before a Master in *Chancery*, to answer truly to the interrogatories; and their names who are sworn must be inserted by the examiner, or his clerk, upon the interrogatories, and then before they are to be examined, they are introduced into the Six clerks office, by the examiner's clerk, and produced at the seat of the adverse clerk in court, where the examiner's clerk is to leave a notice in writing of the name and place of residence of every such witness. *Vide Ord. Chan. 126.* In order to prevent witnesses from being personated, and to give an opportunity for cross examination.

If interrogatories are filed for a witness's examination, the party who produces him is obliged to procure him to stay or return, and attend to be examined thereon; but if no such interrogatories are filed, and he is not demanded to be cross examined at the same time, when he is under examination, if he once goes about his business, the party who intends to cross examine must get him examined as he can; for the adverse party is not in this case bound to produce him over again to attend to be cross examined; since it was the party's fault he had not the

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interrogatories ready to have cross examined him, whilst he was under his former examination.

If a witness be examined by commissioners in the country, he shall not be examined again in court without a special order for that purpose.

(a) Altho' it is an order of course to examine a defendant *de bene esse*, saying just exceptions; yet when the cause is heard, and it appears that such defendant is a party interested, it is proper to shew cause against such an order before he is examined. 1 Vern. 452. Reason court permits the examination of a witness *de bene esse*, is, either from contempt in not answering, and thereby prevent joining of issue; or else where there is danger of losing witness by fickness, &c. but if witness should afterwards be examined in chief, his deposition *de bene esse* is void, the same having answered the whole purpose for which it was taken. P. Wil. Rep. 568.

The plaintiff may examine a person *de bene esse*, though neither old, or infirm, or going abroad, upon affidavit of his being the only person who has any knowledge of the forgery of a deed, or other material fact; for otherwise if he dies before he is examined in chief, the proof of the fact is gone. Moseley, 390. in Marg.

*Witnesses* are sometimes examined *in perpetuam rei memoriam* to preserve their testimony in case of death, &c. and their examinations may be taken either in court, or by commission; and the method of obtaining such a commission, is by filing a proper bill for that purpose. *Vide ante.*

And after the bill is filed, the court, on affidavit made that the said witnesses are old, infirm, going beyond sea, &c. so that the party is in danger of losing their testimony, if they live in the country, will grant a commission; or if they are within ten miles of London, will order them to be examined in court *de bene esse*, which will make their depositions valid in that cause only, and against those who are parties to it; but if it appear, that they might afterwards have been examined in chief, regularly, such depositions shall not be made use of; but if the witness

witnesses live till they can be examined in chief, they must be examined over again as other witnesses in chief are; but if they die in the mean time, or are not returned from beyond sea, then their depositions are to be published in such manner as is shewn hereafter. And the depositions taken in such cases, will not only bind the parties in that and all other suits, but likewise all those claiming by or from them.

Depositions to be taken *de bene esse* shall not be published without affidavit of the death of the witness, or that he could not be examined in chief.  
*Sel. Ca. in Chan. 11.*

Examination *de bene esse* is used in many other bills than barely to perpetuate testimony: as where one man brings a bill against another, and hath a most material witness to examine, upon affidavit that this witness is in a languishing condition, or in danger of dying, before he can be examined in chief, or where he is going a long voyage, from whence he cannot return by the time he is to be examined in chief, and to which place he is bound, and cannot possibly stay; in either of these cases, upon motion or petition, and making an affidavit of such witness's being very old, or sick and infirm, or going speedily beyond sea, and is a very material witness for the plaintiff, the court never denies to make an order to examine such a witness *de bene esse*, saving just exceptions to the other side.

The court cannot make an order to examine a plaintiff *de bene esse*, saving just exceptions, tho' they will make such order to examine a defendant; for the defendant should have demurred to such an immaterial plaintiff.—If a corporation would make one of their own Members a witness, they must *disfranchise* him. *1 P. Will. 595.* But no plaintiff ought to be a witness for another, as being liable to costs.  
*Ibid. 596.*

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A witness was ordered to be examined *de bene esse*, on affidavit that the thing examined into lay only in the knowledge of the witness, and was a matter of great importance, though no affidavit of the witness's being old or infirm. 3 P. Will. Rep. 77. Shirley, &c. v. Earl of Ferrers. Moseley, 388. pl. 199.

But if the party interested shew cause to the contrary allowed by the court, then the plaintiff is to desist from examining such witness.

If by commission, he may examine *ex parte*, or the defendant may come in by appearance and join in commission, if he pleases, and then fourteen days notice is to be given of executing the commission; and the defendant may by interrogatories cross examine such witness, if he thinks fit.

Though the depositions are not ordinarily to be published while the witnesses live, yet in some cases, as by consent of parties, or upon oath, that the plaintiff has some trial at law wherein he shall need them, and that the witnesses are not able to travel; or for other good reasons, the court will sometimes (though very rarely) order publication in the lifetime of the witnesses; and then the party may exemplify the depositions, and they may be given in evidence in any other court, by order of this court.

These depositions are not to be given in evidence, or made use of against any others but the defendants who were subpoena'd to defend the matter, or some claiming under them, whose interest accrued since the bill preferred.

Commonly, where an estate is considerable, the plaintiff is at the charge of an *exemplification* of the proceedings of that cause.

Though there be goods and chattels devised by the same will, whereby lands are devised; yet the proving thereof in the spiritual court, is of no avail in respect of the lands; and this court may prohibit

the

the spiritual court to meddle in the proof any farther than concerns the goods or personal estate, &c.

The proceedings on a bill to perpetuate the testimony of witnesses are mostly the same as others. See more on this head. 1 Vern. 452. 1 Vern. 331. Vide 1 Salk. Cro. Eliz. 352. Hard. 332. T. Raym. 335. Hob. 112. Godb. 336. 1 Vern. 105. 2 Vern. 159. 1 Vern. 185, 308, 441. 1 Vern. 354. *Maxims of Equity* 33.

For proceedings on bill to perpetuate testimony of will against disinherited heir at law. See 1 Vol. 241.

A defendant demurred to a bill to perpetuate, &c. whereas he should not have demurred; but either assented by his answer to examine, or shew sufficient cause why witnesses should not be examined, and left it to the consideration of the court, whether the cause be sufficient or no; and the defendant was accordingly ordered to withdraw his demurrer, and put in an answer; and thereby either consent to such examination, or shew cause to the contrary. *Southall v. Peryn*, 26 Eliz.

The depositions of a witness who was examined *in perpetuam rei memoriam*, were suppressed on petition, after his death, and the examiner discharged, and committed for foul practice and irregularity in taking them, the plaintiff being suffered by the examiner to instruct him, and the witness being proved corrupted, and as he had been examined on a trial to same points, plaintiff might give evidence of what he swore. *Mosely*, 327.

With regard to examining witnesses *viva voce*, it is incumbent on the party who wants to examine to produce his witnesses in court, at the hearing, having first obtained an order for that purpose, and also the exhibits, which are delivered together with the order to the Register in court, and the court examines the witnesses accordingly.

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Order to prove a deed *viva voce* at the hearing, but not permitted to prove witnesses hands who were dead, but leave given (by putting off the cause) to go to the examiner. *Pr. Ch.* 64. *pl.* 59. You may prove an exhibit *viva voce* at the hearing, but you can examine the witnesses only to the execution, *Mosely*, 381.

The court will not grant an order to prove an exhibit *viva voce* on the hearing exceptions to the Master's report, because on arguing them you can offer nothing that was not before the Master. *Mosely*, 190. *pl.* 103.

[For more concerning of examining witnesses *de bene esse*, and establishing their testimony *in perpetuum rei memoriam*. See 2 Eq. Cas. Abr. 417.]

**Of the sufficiency and disability of a witness.** A party interested, by releasing his right, may be a witness. 2 *Vern.* 375. *Culpeper* and *Fairfax*, S. P. 2 *Vern.* 472. *Callow* and *Minure*. See *Green Spirit of Bank. Laws.* 232. Note (b).

Where there is a dispute touching money given for the benefit of parishioners, none of the inhabitants ought to be admitted as a witness. 2 *Vern.*

## 317.

(a) The affidavit of a bankrupt sworn before a Master extraordinary in Cork, was allowed to be read. *Mof.* 78. *pl.* 50.

(b) The deposition of a legatee who had given a receipt under hand and seal for the whole legacy, was not allowed to be read as evidence that she had only received part. *Mosely*, 40.

A legatee (b) of a small legacy, as five shillings to a private person, or five pounds to a nobleman, may be a witness for the will. 1 *Vern.* 254. A person disinterested when examined, becoming interested afterwards, yet his examination may be made use of, *Trin.* 1702. *Holcroft* and *Smith*, but cannot be made use of at law. 2 *Vern.* 699. A witness appearing to be interested, though he swears he hath received satisfaction, yet is not a competent witness, for the law will not suffer

suffer him to swear this, but the release or other act destroying his interest must be proved. *MSS. Anon.* *Mich. 11 Geo. 2.* Plaintiffs cannot be examined for each other, but defendants (*c*) may. *1 Vern. 230.* *2 Chan. Ca. 214.* *Mich. 1715.* *Cassey and Beachfield.* *Gilb. 98.* *Preced. in Chan. 411.* A commissioner may, but he should be examined before any other witness. *1 Vern. 369.* and before he acts as a commissioner. *Gilb. Hist. Chanc. 138.* An arbitrator may. *1 Vern. 157, 158.* Members of a corporation cannot. *Vide 1 Vern. 254.* *2 Vern. 317.* A wife cannot against her husband; unless in case of extreme necessity. *Vide 2 Chan. Ca. 39.* *2 Vern. 79.*

deed, you must examine to the execution only, for the witness may demur to any other questions. *Mosely, 196.*

(c) A defendant examined for the plaintiff, may demur to an interrogatory, because concerned in interest. *Mosely, 195.* pl. 107. See *id. 229;* and if such interested person is witness to a

A bankrupt's wife cannot be examined against her husband, to prove his bankruptcy; but may touching discovery of his effects. *1 P. Will. 611.* *12 Vin. Abr. 11.* pl. 28. *Green's Spirit of Bankrupt Laws, 238.*

Nor can the bankrupt himself be examined touching his own bankruptcy. *2 Stra. 829.* *12 Vin. Abr. 11.* pl. 28. *Bul. Ni. Pr. 38 Cas. Temp. Hardw. Ch. 267.* *Stat. 5 Geo. II. chap. 30.* *Green 66. P. Wil. Rep. 610, 611.*

If an executor in trust renounces the executor's part, and lets another take out administration with the will annexed, he may be a witness. *3 P. Will. 182.*

A defendant by order may examine the *probaire amy*, but not one of the plaintiffs. *Mosely, 312.* pl. 172.

[For more of the sufficiency and disability of a witness, see *2 Eq. Cas. Abr. 395.*]

*Note.* That if a plaintiff wants to examine a defendant as a witness, he must obtain an order by motion or petition for that purpose, which order is

of course, and must be served on the adverse clerk in court; also the defendant may obtain the like order to examine a co-defendant as a witness for him; but all these orders are upon suggestion, that the defendant is not concerned in point of interest in the matters in question, and they are never granted but with a clause of (saving just exceptions to the other side;) and this must be made at the hearing of the cause; and this order for examining a defendant must be produced at the commission office, or in the examiner's, when the defendant attends to be examined, without which he cannot be examined; for it is by virtue of that order they are impowered to examine him, and they cannot do it otherwise. For a petition to examine a defendant, *vide Petitions.*

What shall be admitted as evidence, and will amount to sufficient proof.

A bill in another cause is not to be read as evidence against the person named plaintiff in it, unless it be proved, that it was exhibited with privity. *Wollet and Roberts, 1 Chan. Ca. 64.*

By the constant practice of the court, acts of the court, as a decree, or order, in another cause between the same parties, may be read without an order. *Mosely, 188.*

Depositions cannot be given in evidence against any person who was not party to the suit; and the reason is, because he had not liberty to cross examine the witnesses; and it is against natural justice, that a man should be concluded in a cause to which he never was a party. *Hardr. 22. 472. Bunn. 50. pl. 84. 91. pl. 148. 321. pl. 403. 9 Mod. 229. Cartb. 181. Gilb. Evid. 62. Cb. Pr. 212. Theo. Evid. 30. 12 Vin. Abr. 113. pl. 45. 47. Vern. 413. pl. 390. Eq. Cas. abr. 227. pl. 3. Ask. Rep. 204.*

When

When the depositions taken in a former cause shall be made use of, it must be done by petition to the Master of the Rolls, or motion to the court.

That a man's answer in the spiritual court, or voluntary oath before a justice of the peace, may be read against him in *Chancery*, by order, *vide Vern.* 73.

If a man unnecessarily makes any one a defendant, he thereby cuts himself off from the benefit of his evidence, for it is his own fault.

But where several are made defendants, it will not hinder any one of the defendants from the benefit of the evidence of any others that are made so.

Indeed in case of trustees, it is necessary that they be made defendants, and therefore there the plaintiff may have the benefit of the evidence. *Gibson and Albert*, 10 *Mod.* 19, 20.

But it is the settled practice, that one defendant's answer cannot be read as evidence against another defendant; and therefore, if you want his evidence, you must apply by petition or motion, as before observed.

When copies of notices admitted as evidence, *vide Winne and Loyd*. 2 *Vern.* 603.

The copy of a deed introlled for safe custody, admitted as evidence. *Combes and Spencer*, 2 *Vern.* 471. 2 *Vern.* 591. S. C.

Confessing a matter by answer, sufficient evidence. 2 *Vern.* 380. *Vide 1 Vern.* 452. S. P.

A settlement made pursuant to marriage-articles, evidence that all treaties were resolved into that. 1 *Vern.* 369.

A purchaser who buys in a precedent incumbrance, not obliged to prove the actual payment of the money. 2 *Vern.* 279. and *vide 1 Vern.*

An injured party's oath good *in odium spoliatoris*. 1 *Vern.* 207, 308. S. C. cited.

## Of Examination of

One witness against a defendant's answer not sufficient. *Alam and Jourdon*, 1 Vern. 161. 3 Cba. Co. 123. S. P. Vide 2 Vern. 554.

The oath of the party is ever looked upon in equity to be as good as the oath of a single person.

Where the whole proof of any matter arises from the defendant's answer, the answer must be taken intire, and no part of it impeached by any other evidence. 10 Mod. 405.

Yet observe that cases may, and do often happen, where the court may ground a decree upon the oath of a single witness, attended with other circumstances to corroborate it; as where the answer of the party appears to be notoriously falsified, by which means it comes to lose that credit which otherwise it would and ought justly to have.

Where parol or collateral evidence will be admitted to explain, confirm, or contradict what appears on the face of a deed or will.

To shew that the testator intended his wife and executrix should have the personal estate exempt from debts and legacies. 2 Vern. 252. and vide 1 Chan. Ca. 196. 2 Vern. 99. 5 Co. 67. 2 Vern. 58, 337, 625. *Treatise of Eq.* 126.

A. devised particular lands to his executors to be sold for payment of all his proper debts, and gave directions to the person who drew the will, to give all his personal estate to his executors; but by mistake that was omitted, tho' proved by the person who drew the will. *Harcourt C.* decreed the executors to account for the personal estate, saying, *be must construe the intent of the testator out of the words of the will, and not upon parol evidence.* 2 Eq. Cas. abr. 415. pl. 5.

Where parol evidence touching the testator's intention is not to be admitted, and why. *Vide 3 P. Will.* 353.

Parol

Parol evidence of the person who drew the will, admitted to shew what the testator intended to pass by a devise of his household goods. *Vide 2 Vern. 517*  
Admitted to shew, that grandchildren born after the will, should take. *2 Vern. 378.*

Parol proof allowed of a man's intention in a will, where the question was, if a legacy should be a satisfaction of a debt due from testator to the legatee. *2 Vern. 593.*

Parol evidence where to explain an implication in a will or deed, or upon a declaration and promise, have been allowed in this court. *MSS. Ca. in Chan. 8 Vin. Abr. 195. pl. 24. 11 Vin. Abr. 153. pl. 71. Docksey against Docksey, Hill: 6 Ann. Ibid. Will. Rep. 111. Lamplugh against Lamplugh, Mich. 8 Ann. Ibid. Harris against Horwell, Mich. 7 Ann. Gilb. Eq. Rep. 11.*

When a paper is produced by one party as a charge, the other may read any thing contained in it as a discharge. *Barnard Rep. in Chan. 128.*

Where a testator has given instructions for his will, and before it could be executed, died; the instructions, and not the draught according to the instructions, ought to be proved, for they are the will, and not the draught. *MSS. Ca. in Chan. Sbef's against Pelham, Mich. 8 Ann. 2 Vern. 647. pl. 577.*

Parol evidence admitted, to shew that the devisee promised the testator to pay an annuity. *Oldbam and Litchford, 2 Vern. 506.*

Always admitted to ascertain the person, or the thing described: *Hodgson and Hodgson, 2 Vern. 593.* To oust an implication. *2 Vern. 648, 736.* S. P. Parol proof admitted, to shew that a legacy greater than a debt due to the legatee, was not in satisfaction of the debt. *2 Vern. 593, 594.*

[For more concerning parol evidence, &c. vide *Eq. Cas. abr. 415.*]

If

## Of Examination of

If *A.* purchases in the name *B.*, *A.* may be admitted to prove that he paid the purchase money, and so make it a resulting trust, or trust by implication of law for himself. 1 Vern. 366.

An entry in the book of a steward of a manor, and parol proof by the foreman of the jury, was admitted as good evidence, that a feme covert surrendered her whole estate, although the surrender upon the roll, and the admission thereon, was but of a moiety. 2 Vern. 547.

Of examining witnesses, exhibiting interrogatories, publishing and suppressing their depositions.

(a) If one of the parties, after publication passed, has an order to examine on the usual affidavit, the other party may not only cross examine, but also examine at large. 1 Vern. 253.

One defendant cannot move to strike another defendant out of the bill who hath never been served with process in order to make him a witness, but plaintiff may; and a defendant may have an order to examine such defendant, saving just exceptions. Gilb. Rep. in Eq. 183.

A co-plaintiff, tho' but a trustee, cannot be examined as a witness for another plaintiff; but if he had been made a defendant (*then the trust had been upon oath*) he might upon disclaiming all interest be a good witness. 1 Vern. 230.

(b) Interrogatories and depositions suppressed as having been leading, but on the circumstances of the case, and consequence of an interrogatory being leading, (b) that is sufficient to suppress the deposition. 2 Vern. 472. Yet after interrogatories, and the depositions of a witness thereon, had been suppressed, because the interrogatories were leading, and then publication passed; and the court being moved, that new interrogatories might be drawn and settled by the Master, for the examination of this witness, whose evidence

evidence was very material, though the practice was admitted to be always against it, and it was urged to be of dangerous consequence; yet ONE precedent being produced to this purpose, and the interrogatories which had been suppressed being such as might be drawn by many other counsel, without any apprehension of their being leading; the court, to permit the party to have the benefit of his witnessess's testimony, ordered new interrogatories to be put in and settled by a Master, for his re-examination. *Trin. 1718. Spencer and Allen. Eq. Cas. abr. 232. pl. 3. Gilb. Eq. Rep. 150. Pr. Cb. 493.*

ries, or further examination of the same, or other witnessess, vide ibid. 42.

the witnessess evidence, leave was given to file new ones. Gilb. Eq. Rep. 150. Prec. in Chan. 493. As to the difference of examining in the office, and before commissioners, with regard to exhibiting a new set of interrogatories, vide ibid. 42.

Though the general rule be, that, after publication, no new witness can be examined, nor a witness before examined re-examined; yet, upon special circumstances set forth by motion and affidavit, the rule may be dispensed with. *1 Chas. Ca. 228. 2 Chas. Ca. 75. 1 Chas. Ca. 25.*

Upon motion for leave to examine after publication, upon making the usual affidavit of not having seen the depositions, &c. Lord Keeper declared, that in such a case, the other side should be at liberty to examine at large, as well as cross examine the witnessess, produced by the party who made the motion, *1 Vern. 253.*

If interrogatories are exhibited in the examiners office, and witnessess examined thereon, either party may, without any order for that purpose, exhibit new interrogatories for further examination of the same or other witnessess; But when a commission is issued, no new interrogatories can be exhibited before the commissioners, without motion and leave of the court. *Pascb. 1714. Pre. Cb. 386. Eq. Cas. abr. 233. Andrews and Brown.*

In the qualification of witnesses, equity follows the law: And if a man be rendered infamous in law; as by an infamous judgment, or wants discretion and understanding, his testimony is to be rejected. And the cases where the party is concerned in interest, though never so small, have usually prevailed, unless in special instances: And herein it must be considered whether their interest is so great as it may be presumed to make them partial, or not.

As to evidence, the usual course in this court is by depositions, for no witnesses *viva voce* are allowed at the hearing, except by special order. And there being the same question in both causes, and the defendant's defence being the same, the depositions in a former cause by order of court shall be read against him. But depositions in another cause, in which the matters in question were not in issue, shall not be read. So depositions taken in a suit betwixt other persons are not to be given in evidence; for he had no opportunity to cross examine them. So depositions taken in a cause, where the plaintiff's father was a party to the suit, being in all matters the same, his father being only tenant for life, those depositions could not be read against him; for the advantage ought in all cases to be reciprocal. And where a cause is dismissed, the matter of it not being proper for equity to decree, yet the fact in this cause proved, may be used as evidence between the same parties, whenever it shall come in question again. But when a cause is dismissed, not upon this ground, but for irregularity, so that in truth there was never regularly any such cause in court, and consequently no proofs, those proofs cannot be used: For proofs cannot be exemplified without bill and answer, nor can they be read at law, unless the bill upon which they were taken can be read. No depositions ought to be allowed which were not taken in a court of record.

And

And they are like examinations of witnesses. So that although the defendant may read what part he will, yet the other side may read the whole afterwards.

Note; Exhibits proved by depositions must be shewn at the hearing, if the party would have any benefit by them.

Depositions of witnesses taken in Ireland, allowed good evidence in Chancery here. *Lord Altham v. The Earl of Anglesea*, Gilb. 16, 18.

A witness demurred to an interrogatory as not pertinent—but disallowed. *1 Vern. 165*.

*Of depositions of witnesses, and of proofs admitted in evidence in this court.*

BY order, 19 Jan. 1694. no copies of depositions are to be read or made use of in court, or before a Master, but what are taken out of the proper office, and signed for the party, for whom the same shall be read.

The examiners, or their deputies, have liberty to attend in court to inspect all copies of depositions, which are read either for the plaintiff, or defendant, and to see whether they be truly signed for the party that produces the same; and in case the examiner shall discover any fraud, or ill practice, the cause will be put off; and the parties offending shall stand committed to the Fleet, till the officer injured be agreed with, and paid his fees; and till five pounds be paid to such person as the Lord Chancellor or Keeper shall appoint, for the use of the poor, and till the client injured by putting off the cause be reimbursed his charges in respect thereof, and till the further order of the court. *Ord. Chan. 4.*

Depositions taken in a former cause cannot be read in another cause against one who does not claim under the party against whom they were taken (unless

less by special order.)—But if a legatee brings a bill against an executor and proves assets, another legatee, tho' no party, may have the benefit of those depositions. *1 Vern. 413.*

Bill to perpetuate the testimony of witnesses, and to prove a will, is such a suit wherein if the proceedings are rightly carried on will affect one claiming as a purchaser under one of the parties after filing the bill. *Barnard. 453.*

Depositions amended after publication, upon examination of the examiner and witnesses, and the depositions re-sworn. *2 Will. 646.*—But the like application was denied. *Rep. of Sel. Ca. in Chan. 25.*

One examined as a witness *when disinterested*, he afterwards becomes intitled to the estate in question, his deposition shall be read. *2 Vern. 699.* *Vide 2 Vern. 472.*

After publication you may examine as well to the competency as to the credibility of a witness; and a distinction between them exploded. *2 Vern. 464.*

Defendant may read his own answer from the draught; *secus*, the answer of another must be from the office copy. *Gilb. 66.*

A bond *cancelled* made an exhibit, and allowed as evidence to prove the execution of articles, the limitation being recited and inserted in the bond. *Gilb. 183.*

A man's answer in the *spiritual court*, or *any where on oath*, may be read against him *bere*. *1 Vern. 53.*

Depositions of a sick person, or one beyond sea, may be read after an order for that purpose.

Cross examining a witness by one side in any matter, tending to the merits, makes him a good witness to the other side, though otherwise liable to an exception, as a Member of a corporation, &c. *Vern. 254.*

Depositions taken in a cause where father is tenant for life, cannot be read against the son, tenant of the remainder in tail. *Prec. in Chan. 212.*

If defendant be examined as a witness, plaintiff must stand to his depositions as conclusive; and where a defendant is first examined, you shall not examine witnesses to convict him of perjury.

Deposition of one defendant cannot be read in evidence for another, as being concerned in interest, and decree might be pronounced against him. *2 Vez. Rep. 219.*

A witness having finished his examination on an account, now moved to be examined on the other side, and allowed. *Ayl. 47.*

Where a witness's depositions on the one side, contradict his depositions on the other, it is the course to order him to attend the court to explain himself, otherwise his depositions shall be suppressed. *Chan. Ca. 298.*

This cause stood in the paper for hearing, and the plaintiff applied to King Chancellor by petition, that a deposition taken in the cause might be amended upon an affidavit of the witness; the examiner had mistaken him in the following manner: "The witness had been examined when he saw such a person;" and it was taken down in the deposition, "about six weeks after the marriage of the man inquired after;" whereas the witness in his affidavit swore that he said, "about six weeks after the fire which happened in Drury Lane about August 1727."

King Chancellor, upon hearing the depositions and affidavits of the witnesses, ordered the witness who was present in court to be sworn, which was done, and the man examined, and, the examiner attending, his deposition was amended instantly, and the cause proceeded.

## Of Depositions of Witnesses, &c.

But the like application being made between the seals in a cause between *Traberne* and *Burdus*, he denied it, and said this matter must be stopt in time. 2 *Kel.* 21. pl. 25. *Penderil, v. Penderil.*

Depositions in one cause may be used in a cross cause without motion; and where one party obtains an order, the other may use the same without motion.

No letters or notes not proved shall be used, but records upon motion may be proved *viva voce* in court.

Receipts for money paid cannot be proved *viva voce*, as that would be establishing a charge which the other side have had no opportunity of examining to and disapproving. *MS. Notes.* See *Aik. Rep.* 444. pl. 202.

Depositions in a former cause between the same parties may be used by special order, and the adverse party may also read them. 1 *Chanc. Ca.* 175.

To ground a motion for longer time to examine, the affidavit must contain the names of the chiefest witnesses, and the points to which they are to be examined. *Chanc. Ca.* 317.

A copy of a deed to lead the uses of a fine inrolled for safe custody only, allowed to be read as evidence on a trial at law, whether such deed of uses was executed. 2 *Vern.* 471.

Depositions between the same parties in another cause are not to be read without order.—So of interlocutory — because not knowing what may be read, the opportunity of contradicting them is lost; and an interlocutory order may have been destroyed by a subsequent one. *Sel. Ca. in Ch.* 76.

Defendant not served with process, may on order be examined as a witness, or struck out of the bill (by motion) before answer, or after, on costs. 2 *Chanc. Ca.* 214.

If husband and wife contradict, the depositions ought to be suppressed. *Chan. Ca. 302.*

Shop-books have sometimes been read at the hearing, and sometimes depositions in the admiralty. *Chan. Ca. 306.*

A man's book of accounts is evidence against him, not for him.

Parish-books, or church-books, no evidence.

Trustees shall not be examined one against another.

Parties interested shall not be examined to prove a custom.

Counsel, &c. shall not be examined to what came to their knowledge as counsel for their clients; to other matters they may. See this subject fully entered into, and very ably treated, in Mr. Rayner's Reading, on Statutes *Tempore Geo. II. Quarto P. 111 to 122.* both inclusive; it is well worth the Perusal of the Profession.

Plaintiff's own proof of defendant's contempt allowed. *2 Freem. 132.*

Witnesses formerly examined in *Staccario*, not to be re-examined in *Chancery* as to the same matter.

If a witness refuse to be cross examined, the court on motion will suppress his *ex parte* deposition. *Chan. Ca. 322.*

No exceptions to witnesses after publication. *Chan. Ca. 322.*

A witness cannot demur to questions as impertinent to the issue. *Vern. 165.*

Where there is only a single witness against defendant's oath, this is not sufficient evidence for a decree; nor will the court direct a trial at law, the plaintiff having had the benefit of a discovery on defendant's oath. *2 Vern. 283. Vez. Rep. 97.*

If plaintiff examines but one witness against defendant's answer, he must positively deny the charge therein, and matter must rest singly thereon. *Vez. Rep. 97.*

## Of Depositions of Witnesses, &c.

None can be a witness where his interest is concerned, be it never so small or minute. *2 Vern.*

**317.**

The plaintiff's christian name being mistaken in the title of the interrogatories, the depositions could not be read, nor would the court suffer the title to be amended, though most of the witnesses since examination were gone beyond sea. *2 Vern. 435.*

In some cases, the answer of one defendant may be read against the other. *2 Eq. Cas. Abr. 67. pl. 7.*

A co-plaintiff, though but a trustee, cannot be examined as a witness for the other plaintiff; but one defendant may be examined as a witness for the other: The reason of which is this, that if the cause miscarries the plaintiffs would be liable to costs, and therefore their swearing might be to exempt themselves; besides, it is their own act and choice that they are plaintiffs; but it is otherwise with defendants, for they are forced to be made parties at the will of the plaintiff; and if this act of the plaintiff should entirely take away their testimony, it would be then in the power of any one who had a mind to oppress another, to deprive him of his defence, by making the most material witnesses defendants in the suit. The court has therefore ordered it otherwise, and a defendant that is not materially interested, may be examined either on the part of the plaintiff or defendant, saving all just exceptions. *Casey v. Beachfield, Mich. 1715. MS. Rep. Gilb. Eq. Rep. 98. Eq. Cas. Abr. 225. pl. 78.*

Depositions read at the hearing of the cause, not to be read on appeal to the Lords.

A witness sworn and examined to several of the interrogatories, dies suddenly before he has signed his examination; these depositions cannot be made use of, for they are no evidence. *1 P. Will. Rep.*

**414.**

Where

Where depositions of witnesses may be amended after publication. See 2 P. Will. Rep. 646.

A parishioner is not a good witness to prove a charity given to the parish, but a lodger who does not pay to the poor is. 1 P. Will. Rep. 600.

A witness found to swear falsely in part, his testimony utterly rejected. Dalton, p. 271.

In all cases in law and equity, a man and his wife are but as one witness.

A man outlawed is not to be received as a witness, per Lord Chancellor. Cock v. Morgan.

Copies of depositions are not to be recorded or exemplified. 2 Chan. Rep. 36.

Where the wife shall be allowed as evidence against the husband. See 1 Eq. Cas. Abr.

A deed was executed, and altered by consent of parties, and then re-executed; and per cur. this deed cannot be given in evidence as a new deed, unless it be stamp'd afresh. 2 Eq. Cas. Abr. 414. pl. 13.

A trustee was examined as a witness, and afterwards was thought proper to be made a defendant, his depositions not allowed; tho' he pay no costs, nor shall gain or lose by the decree, because the decree must be against him, if decreed for the plaintiff, and his depositions are to affirm his own act.

One being served with a *subpæna* to testify, upon shewing to the court by affidavit that he was solicitor in the cause, was discharged by order from being examined. Cary Rep. 81.

See in what cases, after publication or death of the deponent, depositions may be explained, but not contradicted by new proof. 1 Chan. Co. 25. Hard. Rep. 180. Kelw. 96.

The king's certificate allowed as evidence. Hob. Rep. 213. Gedbolt 199.

An inquisition *post mortem* may be read as evidence, though it is not conclusive evidence.

## Of Depositions of Witnesses, &c.

After defendant hath been examined on interrogatories, and publication passed, the plaintiff ought not to have a commission to examine witnesses in order to falsify defendant's examination, this tending to make causes endless. *3 P. Will. Rep.* 413.

Depositions proving matters not charged in the bill, and put in issue, cannot be read. *1 Vern.* 484.

The creditors of Lord *Lovelace* obtained a decree for payment of their debts, and to set aside some conveyances gained by fraud; and Sir *H. Johnson* and the legatees are made defendants: The legatees having brought their bill against Sir *H. Johnson*, the question was, if the depositions in the former cause, touching the fraud, might be read in this cause. *Per cur'*: The question being the same in both causes, and Sir *H. Johnson*'s defence the same, the depositions ought to be read. *2 Vern.* 447.

After bill filed and answer come in, a replication was filed, and several witnesses were examined, and their depositions taken; then the plaintiff moved to withdraw his replication, and took exceptions to the answer, and there was a replication, and other witnesses were examined. On the hearing the first deposition was offered to be read, but rejected and suppressed; they should have examined the witnesses *a-new* after coming in of the second answer and replication filed, or have moved the court for liberty to use the former depositions at the hearing. *Gilb. Eq. Cas.* 42.

*5 Dec. 1753.* In a cause at *Lincoln's Inn Hall* concerning a *modus* for small tithes due to the Vicar of *Westbam* in *Essex*, a survey taken by commissioners appointed by the Commons *tempore usurpationis*, of the lands of King *Charles the first*, his Queen, &c.—(the manor of *Westbam* being part of the Queen's

Queen's dowry) was produced in evidence to prove, that tithes were thereout payable to the Vicar.—Lord Chancellor *Hardwick* said, that that survey was taken with a great deal of care, as the then governors were willing to get all they could—and that it had always been given in evidence in the court of Exchequer, and had been remarked as being very exact and particular. *MS. Notes.*

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**L I S T**

OF

**O F F I C E R S**

Belonging to the

**High Court of Chancery.**

In Easter Term, 18 Geo. III.

*Chancellors.*

**T**HE Right Honourable *Henry Earl Bathurst,*  
Lord High Chancellor of Great-Britain.

*Masters of the Rolls.*

The Right Honourable *Sir Thomas Sewell, Knt.*

*Masters in Chancery.*

1. <i>Peter Holford.</i>	Equires.	Nº. 1.	Symonds Inn.
2. <i>John Browning.</i>		Nº. 10.	
3. <i>Thomas Anguish.</i>		Nº. 10.	
4. <i>William Graves.</i>		Nº. 10.	
5. <i>Samuel Pecbell.</i>		Nº. 4.	
6. <i>John Eames.</i>		Nº. 4.	
7. <i>Edward Montague.</i>		Nº. 7.	
8. <i>Edward Leeds. Boswell Court.</i>			
9. <i>W. Weller Pepys.</i>		Nº. 4.	
10. <i>John Hett.</i>		Nº.	
11. <i>Robert Ord.</i>		Nº.	

In Mr. M<sup>r</sup> Chief Register's Division.

Report of Mr. Charles Duley of the Royal Exchange  
Concerning the State of the Bills of Exchange  
and Payments made by the Bank of England.

Deputy Registers to Lord Chancellor,  
John Dickins, and Benjamin Green, Esqrs.

Deputy Registers to Master of the Rolls,  
Stephen Martin Leake, and James Weston, Esqrs.

Clerk of Reports, and Custody of Entry Books.

Thomas Eld, Esquire.

Entering Clerks, Mr. Francis Bowyer,  
Francis Bowyer, and Francis Bell, Esquires.

Accomptant General.

Thomas Anguish Esquire.

Six Clerks.

- |                         |          |
|-------------------------|----------|
| 1. Samuel Reynardson,   | Esquires |
| 2. William Mitford,     |          |
| 3. Christian Zincke,    |          |
| 4. Robert Woodford,     |          |
| 5. Nebemiah Winter, and |          |
| 6. William Sewell.      |          |

Sworn Clerks, and waiting Clerks, in each Six  
Clerk's Division.

In Mr. Reynardson's Division:

John Colman, Francis Douce, Francis Dalton,  
Samuel Thayts, John Seaman, William Mason, Charles  
Owen, Cambridge Silvester, and Preston.

In Mr. Mitford's Division.

Joseph Nicboles, Solomon Fell, Thomas Handley,  
George Bowles, John Costrell, Darcy Tancred, and  
John Ribston.

In

Officers.

In Mr. Zincke's Division:

Robert Smith, Robert Chester, Robert Wainwright,  
Charles Frewen, William Baynard, John Sheppard,  
and Peter Cawett.

In Mr. Woodford's Division.

George Townsend, Frederick James Scrope, William  
Meare, Elbro' Woodcock, Richard Bristow,  
Thomas Marriott, Henry Gase, and Charles Kebbleb-  
waite.

In Mr. Winter's Division.

Herbert Croft, Edward Boutflower, John Rat-  
cliff, Thomas Metcalfe, George Bird, John Greenbill,  
Gerard Levinge Van Heyibusen, and William  
Wilday.

In Mr. Sewell's Division.

Richard Palmer, Joseph Hill, William Michael  
Lally, William Trollope, Henry Barker, Farningham  
Cbeveley, Abram Hilton, and William Hobbs.

Keeper of the Records.

J. H. Bateman.

Master of the Subpoena Office:

will done in William Courtenay, Esq.

Deputy.

George Hardisty.

Register of Affidavits.

Edward Woodcock, Esquire:

Deputy.

Paul Humpreys.

Principal

*Principal Examiner.*

*John Spooner, Henry Filteroff, Esquires.*

*Examining Clerks.*

*John Worth, Nathaniel Edmunds, Alexander Williams, J. H. Bateman, James Douce, and John Morgan.*

*Copying Clerks.*

*William Langley, William Butcher, John Morgan, John Wills, James Hearley, John Smith, Jonathan Langley, and William Dance.*

*Clerks of the Petty Bag.*

*Henry Thomas, Charles Deaves, and Thomas Mendham, Esquires.*

*Deputies.*

*Jacob Banister and John Love.*

*Clerks of Inrolments.*

*John Mitford, and Thomas Brigstock.*

*Clerk of Inrolment of Proceedings in Bankrupt Masters.*

*Harry Harwood, Esquire.*

*Clerk of the Crown.*

*The Honourable John Yorke, Esq.*

*Deputy.*

*Charles Frewen, Esq.*

*Clerk and Comptroller of the Hanaper.*

*Earl Northington.*

*Deputy.*

*John Church, Esq.*

*Clerk.*

**Duties.***Clerk.**Joseph Morris.**Clerk of Presentations.**Matthew Graves, Esquire.**Deputy.**Bagge.**Clerk of Appeals.**Randle Ford, Esquire.**Corporation of Cursitors.**Principal.**Thomas Gataker, Esquire.**Affiliants.**Francis Burton, and Nicholas Brown, Esquires.**Cursitors.*

*R. Woodford, Hugh Valence Jones, Thomas Lamb,  
Thomas Stephens, Charles Frewen, Edward Wood-  
cock, Joseph Walker, John Hingeston, Elbro' Wood-  
cock, Lawrence Cottam, Daniel Habn, Henry Perle,  
Thomas Lloyd, Robert Appleyard, Jeg. Wellard,  
Robert Nutal, Augustine Greenland, Thomas Ham-  
mond, George Hill, Ralph Aldus, and Jernyngbam  
Cbeveley, Esquires.*

*Bag Bearer.**William Warren.**Clerk of the Rolls Chaple.**John Keplin, Esq.**Serjeant at Arms.**Richard Jephson, Esq.**Deputy.*

*Deputy.* **FRANCIS MACKLAY, Esquire.**

*Warden of the Fleet:*  
**John Eyles, Esq.**

*Pursuivant:*  
**Harry Harwood, Esquire.**

*Deputy.* **THOMAS TAHIT,**

*James Smith.*

*Usher.* **Henry Stone.**

*Cryer.*  
**Samuel Scoble.**

*N. B.* The several officers above named, attend at their respective offices, from ten o'clock in the morning, till two in the afternoon; and from four till eight in the evening, in term time; and they generally keep the same hours in the vacations, except *Trinity*, when few of them seldom attend at all in the afternoon; and not very regularly in the mornings.

**A.N.**

**AN ACCOUNT** of the Fees due to the particular Officers of this Court, for Business and Attendance, as settled by an Order made in this Court by Lord Chancellor Hardwicke, bearing Date the 28th Day of November, 1743.

**MASTERS IN CHANCERY.**

**T**HAT the masters or their clerks do not demand or take any greater fees or rewards for the business done, or to be done in their respective offices, than the fees or rewards following, viz.

	l. s. d.
For every oath, affirmation or attestation upon honour —	o i o
For taxing costs for the plaintiff's not filing his bill, or not proceeding to reply; or for the defendant's not appearing in due time —	o 2 0
For taking the acknowledgment of every deed to be inrolled —	o 2 0
For the caption of every recognizance for each convisor —	o 2 0
For the examining exemplifications by two masters; to each master for every skin of parchment	o 2 0
For every report or certificate made upon orders before hearing —	o 10 0
For every report or certificate after hearing, or in matters of lunaticks, bankrupts or infant trustees, or mortgages to convey, and in other matters referred to them, where no cause is depending in court —	i o o For

**Fee.**

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*l. s. d.*

For every summons	—	10	0	2	0	0
For allowing and signing every advertisement to be put in the Gazette	—	10	0	0	0	0
For ingrossing one part of every deed allowed by the master, each skin	—	10	0	0	0	0
For allowing and signing every deed, recognizance, account or other matter allowed and signed by the master	—	10	0	2	6	0
For signing and certifying every exhibit proved before a master	—	10	0	2	6	0
For copies of draughts of conveyances to be settled by the master, and of depositions, interrogatories ingrossed for examining the parties, and of examinations, eight pence a-side, to be paid by the party requiring the same	—	10	0	0	8	0
For copies of draughts of conveyances to be settled by the master, and of deeds brought before the master, and of depositions, interrogatories ingrossed for examining the parties, and of examinations, eight pence a-side, to be paid by the party requiring the same	—	10	0	0	8	0
For copies of draughts of reports, charges, discharges, bills of costs, accounts, objections, and of schedules of writings, and other matters brought before a master, to be paid by the party requiring the same, six pence per side	—	10	0	0	6	0
For the return of a sheriff's patent	—	10	0	2	6	0
For an examination besides the oath	—	10	0	2	6	0
For writing every receipt for books, writings, or other things delivered out by a master	—	10	0	2	6	0

**For**

	l. s. d.
For settling, adjusting and satisfying bills of costs under commissions of o bankruptcy	10 0 0
For subscribing the receipts for trust money re-invested in Sarab-Sar stock bewells or annuities paid off, pursuant to act of parliament	10 0 0
For expunging scandal or impertinence out of every record	10 0 0
For striking a jury from each party	10 0 0

When a master is requested to go out of his office to attend any person to administer an oath, or do any matter belonging to his office, a reasonable recompence ought to be made such master for his trouble and loss of time.

#### THE CLERK'S FEES.

	l. s. d.
For drawing and transcribing every report or certificate	0 5 0
For drawing and ingrossing every recognizance with the condition	0 5 0
For writing each bidding for estates before a master	0 2 6
For writing the jurat of affidavits taken in matters not depending in court, as also the caption of every recognizance	0 0 6
For attending the court with deeds and writings each day	0 6 8

That the masters and their clerks do observe and perform the several rules and regulations following, viz.

In all copies of draughts of reports, charges, discharges, bills of costs, accounts, objections to draughts of reports, and schedules of writings; and other matters brought before a master. The bodies of such copies as are written without a column of figures are to contain fifteen lines in a side, and six words in a line, except the titles, which are to contain four words in a line.

Articles of accounts to contain fifteen lines in a side, and four words in a line, besides the column in figures on the right hand, and dates and times in figures in the left hand column.

Copies of accounts containing numbers, as of *South-Sea* and other bonds in the public companies or the like; and copies of accounts, and of schedules of accounts, consisting of more than one column of figures, being rendered very obscure, and in some cases unintelligible; if such numbers and figures be wrote in words at length, therefore that such copies may be understood by preserving the numbers and columns, the same are to be wrote in figures according as figures are used in the originals, or draughts of the accounts or schedules of accounts so copied.

In copies of bills of costs, the year of every term to be wrote in figures by way of title; other dates and times to be wrote in figures, but not in the margin on the left hand, which perplexes the taxations of such bills.

All deeds allowed by a master are to be fairly ingrossed by his clerk, or some person employed by him, and that with such dispatch as may create no delay to the suitors.

**Fees.**

Any person shall be at liberty to take a copy of a report without the schedule, or of the schedule without the report. And in cases where distinct demands of several parties, creditors, are comprised in one report, any person is to be at liberty to take a copy of so much of the report or schedule as relates to any distinct or separate demand.

### THE OFFICE OR REGISTER OF THE COURT OF CHANCERY.

That the Register and his deputies, and clerks, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

l. s. d	
For drawing all orders for each side 3s.	
which is to contain not less than twenty-four lines in a side, and seven words in a line, one with another (except the title, which is to be four words in a line one with another) dates and sums to be in figures as heretofore,	
<i>per side</i>	—
For the entry of each order <i>per side</i>	o 3 0
For all orders whereby agreements signed by the parties or their clerks in court, are made orders of the court, 3s. <i>per side</i> , to be paid by the party drawing up the order, as in other cases, and 3s. <i>per side</i> by the other party, on applying for a duplicate thereof, but the whole fee of 6s. <i>per side</i> is not to be taken of any one party	o 0 6
For entry of all such orders, 6d. <i>per side</i>	o 3 0
For copies of all orders, exceptions and petitions, for the first side 1s. 6d. and	o 0 6

	l. s. d.
for every other side is. each side to contain not less than twenty lines, and not less than six words in a line, one with another (except the title which ought to be as above.) In this item is contained the Register's fee for signing	0 1 0
For filing every report, certificate, and award	0 0 0
For the copies of all reports, for the first side is. 6d. and for every other side is. the body to contain the same number of lines and words as in the fifth item per side	0 1 0
For copies of all minutes taken by the Register is. 6d. for the first side, and is. for every side after, to be wrote as the copies of orders are to be wrote	0 1 0
For entering a cause for hearing, (except those set down by the six clerks, for which nothing is paid)	0 1 0
The senior Deputy-Register attending the Lord Chancellor has the privilege of setting down eight causes in every term; and the senior Deputy-Register attending the Master of the Rolls has the privilege of setting down six causes every term; for setting down of each of which causes twenty shillings	1 0 0
For making of notes of the causes which stand for hearing, for grounding the <i>subp<sup>a</sup>na</i> to hear judgment	0 0 8
For every decree pronounced	0 5 0
For every dismissal on hearing a cause	0 0 4

## Fees.

The Register receives for the Master of the Rolls, for every decree or dismission 6*s.* 8*d.*

	l. s. d.
To one of the four deputies for his hand to all certificates	o 1 0
For filing every election	o 0 4
For a search in the old books for any or- der or decree for every year	o 0 4
For entry of all attachments and procla- mations, for each	o 0 2
For all rules of course to answer, reply, produce witnesses, and for publication, for each	o 0 4
For entry of all appearances on con- tempts	o 2 10
For a bill of costs for want of a bill filed in time	o 0 4
For all copies of attachments, procla- mations, commissions of rebellion, &c. for each	o 0 4
For entry of all pleas and demurrers	o 1 0
For the clerk's drawing and writing all certificates	o 0 6

This 6*d.* is paid for searching and examining  
the books of orders, as well as for the drawing.

	l. s. d.
For poundage on paying out deposits made on filing of exceptions, rehear- ings, appeals and bills of review, one shilling per pound	o 1 0
For examining all orders and reports, either with the clerk of the entries, or clerk of the reports, or custody of the old or new books to be used as evidence at law, 2 <i>d.</i> per side	o 0 2

For

Fees.

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l. s. d.

For every exhibit proved <i>viva voce</i> in court, and marked by the Deputy Register	—	0 2 6
For stamping printed copies of briefs and letters-patent, and telling out and telling in again after the collection 2s. 6d. per hundred	—	0 2 6
For entering of all commissions to take answers, or examine witnesses <i>ex parte</i>	—	0 0 8
But if it be a joint ordinary commission, then	—	0 1 4
For entry of all commissions to take answers, to examine witnesses in perpetual memory <i>ex parte</i> , only	—	0 2 0
But if it be a joint commission in perpetual memory to hear and determine	—	0 4 0
For the copy of the order for the commission, if it be required	—	0 0 4
For the entry of all amerciaments	—	0 1 0

That the register, his deputies and clerks, do observe and perform the several rules and regulations following, *viz.*

In copying of schedules of deeds, writings and accounts annexed to reports and certificates, the dates are to be in figures in one column, and the sums in figures in another column; but where dates or sums occur in the body of orders, reports, certificates, or of such schedules as aforesaid, the same are to be copied in words at length, and not in figures; and any suitor or other person shall and may be at liberty to take a copy of a report without the schedule, or of a schedule without the report; and in cases where distinct demands of several

## Fees.

ral parties or creditors are comprised in one report, any suitor or other person shall and may be at liberty to take a copy of so much of the report or schedule, as relates to any distinct or separate demand.

And whereas it has been usual, where mistakes have been made in drawing up of orders, for the Register's clerks to take *six-pence* a-side for the writing the same over again; it is ordered, that if any mistakes for the future are committed by the Register, or their clerks, in drawing up orders, so as to occasion new copies to be made thereof, the suitors shall not be obliged to pay any thing to the Registers or their clerks for new copies. But if the mistakes are occasioned by the parties, or their clerks in court, or solicitors, in such case the Registers may take *six-pence* a-side for transcribing the same.

And it is hereby declared, that the Registers are not intitled to be paid for copies of orders made on hearing causes by consent, or for the copies of any other orders, decretal or interlocutory, unless such copies are required by the parties.

And it is further ordered, that in recitals contained in orders, the following rules be observed, *viz.*

*First,* That in original decrees and orders made on hearing of causes, the recitals previous to the exhibits read, be of the substance and scope only of the pleadings tending to the points in controversy upon which the decree is founded, and be made in the most concise manner, and not to contain any recitals immaterial to the points in question.

*Secondly,*

## Fees.

*Secondly*, That in orders made on re-hearings and appeals, where the first order is affirmed generally, nothing be recited previous to the ordering or decretal part of the former order on hearing, which ordering or decretal part may be fully recited, if the petition of re-hearing or appeal complains of the whole order. But if such petition complains only of part of the order, then no more thereof is to be recited than is complained of, or what necessarily relates thereto. Nor is more of such petition to be recited than the points complained of, and no recital is to be made of the reasons or allegations of counsel therein assigned. But in cases where the first order is varied, the scope and substance of so much of the pleadings only as is material, and tending to the points varied, is to be recited in the most concise manner.

*Thirdly*, That in orders made on the coming in of the Master's report, or in equities reserved, nothing be recited previous to the ordering part of the original order, except such matter as necessarily leads and gives light to the order made on such reports and equities reserved, and that in the most concise manner; nor is more of such original order to be recited than what relates to the matters or points upon such occasions brought before the court.

*Fourthly*, That in orders made on ordering pleas or demurrers, where the plea or demurrer is overruled, the order is not to contain any recital of the substance thereof, or of the pleadings, but when the same is allowed intirely or in part, proper recitals may be made under the restrictions contained in the first rule touching orders made on hearings.

*Fifthly*, That in orders made on hearing petitions, the recitals are to contain no more than a

**Fees.**

short state of the material facts on which the prayer of the petition is grounded.

### THE OFFICER or REGISTER or AFIDAVITS.

That the Register of affidavits, his deputy or clerk, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

	l. s. d.
For filing every affidavit with or without schedules, or other papers thereto annexed	0 0 4
For registering every affidavit, for each side	0 0 4
For the copy of every affidavit, for each side	0 0 4

The first side to contain nineteen lines, and every other side seventeen lines, and six words in each line, except the title of the cause and schedules of accounts annexed to such affidavits, which are to contain four words in a line, besides the column of figures on the right hand, and dates and times in figures on the left hand.

	l. s. d.
For the Register or his deputy's hand, when required	0 1 0
For a certificate under the Register, or his deputy's hand, when required	0 1 0
For every search for an <i>affidavit</i> , for each term 6d. with the liberty of reading it over if found	0 0 6

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If the *affidavit* is found, and a copy taken, nothing is to be paid for the search of that term.

For searching for and taking an original *affidavit* off the file, in order to attend the Lord Chancellor or Master of the Rolls therewith, or to be made use of in any court — o 6 8

For attending therewith at the Lord Chancellor's, or at any of the courts at *Westminster* or in *London*, each time — o 6 8

For examining the copy of every *affidavit* with the original, in order to make use of such copy as evidence in any other court than the court of Chancery — o 1 0

For carrying an original *affidavit* by the Register or his deputy, to any assize, for each day, including horse-hire and expences — i i 0

For trouble, attendance, and taking security to return an original *affidavit* to the office, when by order of the court such original *affidavit* is directed to be delivered to an associate or clerk of assize, to be made use of at the assizes, and which is now become the common practice to save the expence to the suitors of it's being carried thither by the Register or his deputy. o 6 8

That the Register of *affidavits*, and his deputy or clerk, do observe and perform the following regulations, viz.

Whereas it has been usual upon filing *affidavits* with schedules, certificates, or any other papers

papers annexed thereto, that every such annexed paper has been charged for as a distinct affidavit, and the suitors have paid for the filing of the Register's or his deputy's hand to each of such annexed papers, several and distinct fees; according to the number of such papers; it is ordained, that all papers annexed to an affidavit be considered as parts thereof; and that the suitors in every such case do pay no more than one fee for the filing, and for the Register's or his deputy's hand.

### THE OFFICE OF EXAMINERS.

That the examiners, and the examining and copying clerks, do not demand or take any greater fees or rewards for the business done or to be done in their offices, than the fees or rewards following, viz,

### THE EXAMINERS FEES.

	l. s. d.
For the examination of every deponent, defendant or delinquent	— 0 2 0
For copies of all manner of depositions, interrogatories, or other pleadings which they have warrant to copy, for every sheet, containing fifteen lines, and six words in a line	0 0 10
For all manner of certificates whereunto their hands are required	0 2 0
For the examination of any copy or book of depositions which is to be given in evidence in another court with the original	0 16 8
For the examination of every deponent unto whom the examiner is required to travel, if it be near at hand	0 6 8

If far off, or the examiner has occasion to go off, what more the party shall think fit whom it concerns.

## THE COPYING CLERKS FEES.

l. s. d.

For their labour in writing a note of every deponent's name, title and place of abode, to be left with the adverse party's clerk in court, and shewing every deponent at such clerk's seat, and getting every deponent, defendant or delinquent, sworn — o o 6

For copies of all manner of depositions, interrogatories, or other pleadings which they have warrant to copy, for every sheet containing fifteen lines, and six words in a line — o o 2

For their attendance in court when required, with any deeds or writings left in their custody, as also for their labour in searching for any record a reasonable satisfaction, according to such their attendance and labour.

l. s. d.

For their labour in writing all manner of certificates, to which the master-examiner's name is required to be set o o 6

For their labour in examination of any copy or book of depositions, which is to be given in evidence in another court, with the original — o 3 4

For their labour to get any deponent, defendant or delinquent, sworn abroad, if near at hand — o 3 4

If

If far off, what more the party whom it concerns shall think fit, according to such attendance.

That the examiners and the examining and copying clerks do observe and perform the several rules and regulations following, *viz.*

The examining and copying clerks are not to take any gift or gratuity whatsoever of the suitors, their clerks in court, solicitors or agents for office-business done within office-hours. Nor shall they take any such gifts or gratuities for office-business done out of office-hours, unless such gift or gratuity be first settled and allowed by the right honourable the Master of the Rolls, upon application to be made for that purpose; and they are constantly to attend during the whole time of office-hours.

And in regard the examining clerks are not intitled to any fee whatsoever, and their employment is of great trust, and requires great integrity, skill and constant attendance, they are to have such an allowance from their principals as they may be able to subsist on, without being liable to any temptations to betray the secrets of the office, or to be guilty of any exactions; and the rather, because the misbehaviour of the examining clerks may effect the office of the examiners by whom they are nominated.

And whereas by an order of the twenty-first day of October in the fourth and fifth years of the reign of King Philip and Queen Mary, it was ordered, that the examiner should not deliver copies of the depositions of witnesses by them examined, without copies of the interrogatories; it is ordered, that the said order be varied in this particular, that neither

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### Fees.

either party shall be obliged to take an office-copy  
of his own interrogatories.

### THE SIX CLERKS OFFICE.

That the six clerks, sworn clerks, and writing  
clerks, do not demand or take any greater fees or  
rewards for the business done or to be done in this  
office, than the fees or rewards following, *viz.*

### THE SIX CLERKS FEES.

Out of all copies of bills, answers, pleas, demurrers, replications, rejoinders, depositions, interrogatories and other records usually dispatched in their offices, <i>4d. per sheet</i>	—	0 0 4
Out of all exemplifications of bills, an- swers and proceedings in the same office, <i>14s. per skin</i>	—	0 14 0
Out of every commission of rebellion	—	0 6 0
For examining and signing every decree of dismissal	—	0 17 0
For every prisoner brought up to the court by <i>habeas corpus</i> to the two six clerks then attending the court, one fee of	—	0 3 4
For every assignment of a guardian for infants in court, to the two six clerks then attending, one fee of	—	0 3 4
For the custody of every bond entered into by order of the court to the senior six clerks not towards the cause	—	0 3 4
For every search for a record transmit- ted into the record-room, which is not usually transmitted thither until the same has been filed by the space	—	0 3 4

of

## Fees.

of twelve months or upwards, but during that time lies in the respective six clerks study, for the sworn clerks and writing clerks to resort to without fee

Out of every cause carried on in the petty bag, for every term, wherein any rule or rules is or are entered with them, as other matters done by them

To the aiding six clerk for his attendance on his Majesty in council with the sheriff's roll, when a person is pricked down for sheriff and is afterwards excused, and another named in his room

The six clerks, as comptrollers of the hanaper, are intitled unto the several fees following, viz.

For comptrrolling and making up the accounts of the hanaper yearly, the sum of

For ingrossing the comptrolment-book to be transmitted to the Exchequer, the yearly sum of

The six clerks are intitled unto (besides the parchment) out of the profits of the hanaper the following fees, viz.

For inrolling of all warrants, whereby any patents, commissions, licences, pardons, leases or other grants whatsoever that pass by and under the great seal (except such as are herein after particularly mentioned) after the rate for every skin so passing the great seal

For

Fee.

For inrolling of all warrants, for all commissions of peace, of sheriffs, commissions of appeal from the Admiralty, commissions of policy of insurance, and commissions de lunatico inquirendo	—	10/-
For the inrolling of all warrants for all other commissions of appeal, and commissions of adjuncts	—	0 3 4
For the inrolling of all warrants for the custody or the revocation of a custody of a lunatick or idiot, for every of them	—	0 3 4
For the inrolling of the warrants for every presengation, donation or revocation, to any rectory, vicarage, deanry, archdeaconry, chancellorship, treasuryship or dignities to any metropolitical, cathedral or collegiate church, or for any canonship or prebend, in any of the said churches, or for the mastership of any hospital or other ecclesiastical living, or for the grant of any presentation or presentations, <i>pro unico vel pluribus vicibus</i> thereunto, and for every dispensation and commendam	—	10/-
For the inrolling of the warrants for every denization or commission of bankrupt	—	0 3 4
For the writing of every exemplification of all such records as they have a right to exemplify, after the rate of every skin	—	1 6 8
For every Sheriff's patent, writ of assistance, writ of discharge, <i>deditus potestatem</i>	—	1 7 0

For

**Fees:**

	l. s. d.
For ingrossing the patent, writ of assistance, writ of discharge, <i>dedimus potestatum</i> , the three oaths, docquer, parchment, and attending the sealing	1 14 4
For the recognizance in a <i>Welch</i> patent, more	0 2 6

**THE SWORN CLERKS AND WRITING CLERKS FEES.**

	l. s. d.
For filing every bill, and for the rule to answer, including the term-fee and stamps	0 5 4
For an attachment	0 0 6

	l. s. d.
Whereof the stamp is	0 1 6
Entering with the Register, and duty	0 1 2
Seal	0 0 6
Sworn clerk's fee	0 2 10
	<hr/>
	0 6 0

	l. s. d.
Whereof the stamp duty is	0 1 6
Entering with the Register, and duty	0 1 2
Seal	0 0 6
Sworn clerk's fee	0 3 2
	<hr/>
	0 6 4

	l. s. d.
Whereof stamps on the writ and docquer are	0 2 6

Entering

## Fees.

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l. s. d.

Entering at the Register, and			
duty	—	o 1 6	
Hanaper	—	o 4 4	
Lord Chancellor's purse-bearer	—	o 1 0	
The six clerks	—	o 6 6	
Sworn clerk's fee	—	o 4 0	
		o 19 4	

l. s. d.

For a sequestration	—	o 15 4	
Whereof the stamp duty is	—	o 1 6	
Seal	—	o 0 6	
Sworn clerk's fee	—	o 13 4	
		o 15 4	

l. s. d.

For a <i>Ne exeat Regnum</i>	—	o 14 10	
Viz. Stamps	—	o 1 6	
Lord Chancellor's secretary for			
signing	—	o 2 6	
The seal	—	o 0 6	
The sworn clerk's fee	—	o 10 4	
		o 14 10	

l. s. d.

For a <i>Habeas Corpus</i>	—	o 14 2	
Viz. Stamps	—	o 5 0	
Lord Chancellor's secretary for			
signing	—	o 2 0	
Seal	—	o 0 6	
Sworn clerk's fee	—	o 6 8	
		o 14 2	

For a <i>dedimus potestatem</i> to take an an-			
fwer	—	—	o 9 4

## Fees.

		l.	s.	d.
Viz. Stamps	—	0	1	6
Seal	—	0	0	6
Sworn clerk's fee	—	0	7	4
		0	9	4
		l.	s.	d.
For every special <i>dedimus</i> by order of court	—	0	12	8
The same charges paid out	—	0	2	0
The sworn clerk's fee	—	0	10	8
		0	12	8
For a commission to examine witnesses with the schedule of oaths	—	0	15	4
The Ramps are	—	0	1	6
Seal	—	0	0	6
The sworn clerks fee	—	0	13	4
		0	15	4
For joining in commission to examine witnesses, to the clerk who joins in such commission only	—	0		6
For every special commission for dividing lands, and ascertaining boundaries, or otherwise special by order of court	—	0	19	8
The stamps and other out-goings are included in this 19s. 8d.				
For every writ of execution upon an order	—	0	6	8
If an order of one side	—	0	6	8
If more	—	0	13	4
If longer, than <i>per</i> skin (besides stamps)	—	0	6	8
1 l. 6 s. 8 d.	—	0		
Each				

Each skin to contain at least sixteen sheets, and each sheet ninety words.

	l. s. d.
	1 2 8
For every common injunction	<u>l. s. d.</u>
Viz. Stamps	0 2 6
Signing by Lord Chancellor and Master of the Rolls	0 6 4
The Seal	0 0 6
Sworn clerk for making the writ	0 13 4
	1 2 8
For every special injunction more than for the common injunction	0 3 4
For every term the cause is in agitation the sworn clerks on each side of the cause are intitled to a term-fee of	0 3 4
For the appearance of every defendant who appears separately by himself	0 3 4
If two or three defendants appear by the same clerk, reckoning husband and wife as one, the fee for appear- ing is but	0 3 4
But if more than three, and not exceed- ing six defendants, appear together, the appearance fee is	0 6 8
If more than six the appearance fee is	0 10 0
And so in proportion to the number of defen- dants, reckoning 3s. 4d. for every three defen- dants, man and wife still computed but as one.	
For copies of all bills and answers, de- positions and other proceedings, for	G 2      each

## Fees.

	l. s. d.
each sheet, containing fifteen lines, and six words in every line	o o 10
<i>Viz.</i> Stamps —	o o 2
To the six clerk —	o o 4
To the sworn clerk	<hr/> o o 4
	o o 10
For a rule to produce witnesses, or to pass publication and notice thereof, including the stamp duty —	o 4 0
For setting down a cause for hearing be- fore the Lord Chancellor or Master of the Rolls, by their six clerk, ac- cording to the right they claim for so doing, for each cause to set down	1 5 0
For drawing and inrolling decrees and dismissions (if not exceeding one skin)	1 13 4
	<i>l. s. d.</i>
Out of which is paid to the six clerk —	o 17 0

But if the decree or dismission be longer than one skin, then for drawing every sheet 8*d.* and 8*d.* per sheet inrolling, each sheet to contain sixteen or seventeen lines; and in such case the suitor pays the 17*s.* to the six clerk.

For a writ of execution of a decree, for every skin thereof, including the parchment but not the stamps	1 6 8
Each skin to contain not less than six- teen copy-sheets for attending the court on the day of hearing of every cause wherein they are concerned	o 6 8
And if the cause is more than one day in hearing, then for each day the cause is actually in hearing —	o 6 8
	For

l. s. d.

For every other attendance in court when required by the proper client, or his solicitor, but not otherwise	o 6 8
For every attendance on a Master on taxing of costs —	o 6 8
For every attendance on a Master on other occasions (except taxing costs) by the direction, or at the request of the proper client or his solicitor, if to- gether with the solicitor in the cause	o 3 4
If without the solicitor, then —	o 6 8

But note; this fee of 3s. 4d. for any such at-  
tendance on a Master, if together with the solicitor  
in the cause, is only to be allowed by the Masters  
in taxing costs between the client and his solicitor  
or clerk in court; but on taxing costs between  
party and party, no fee is to be allowed to the  
sworn clerk for any such attendance, together with  
the solicitor in the cause.

l. s. d.

For entering an appearance for the par- ties with the Register, according to any order of court —	o 3 4
For signing their consent, as clerk in court, to any petition, agreement or election — —	o 3 4
For every certificate to be signed by the six clerk — —	o 2 6
For examining all copies of bills, an- swers, depositions of witnesses, inter- rogatories, and other proceedings, with the records in order for evidence, if eighty sheets or under —	o 6 8
But if more than eighty sheets, then af- ter the rate of one penny per sheet	o o 1

G 3

For

For the exemplification of every record  
(besides the stamps) and vellum, (if  
writ on vellum) the Master's fee for  
examining, and sworn clerk's fee  
for attending to examine, and han-  
aper fee for every skin thereof 1*l.* 6*s.*  
8*d.*

*l. s. d.*

1 6 8

*l. s. d.*

Out of which is paid to the six clerk	—	0 14 0
To the sworn clerk	—	0 12 8
	—	
		1 6 8

Each skin to contain at least sixteen copy-  
sheets.

*l. s. d.*

For drawing and ingrossing the docquet and master's certificate, (besides the stamp which is one shilling)	—	0 3 4
For attending the masters to examine exemplifications that exceed not three skins	—	0 6 8

If more, then in proportion to 6*s.* 8*d.* for every  
three skins.

*l. s. d.*

For every writ of assistance to put the defendants into pos- session, pursuant to a decree	—	0 16 4
--	---	--------

*l. s. d.*

Out of which is paid for stamps	—	0 1 6
Seal	—	0 0 6
Sworn clerk's fee	—	0 14 4
	—	
		0 16 4

For

**Fees.**

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*l. s. d.*

For the copies of all deeds,  
writings, papers, letters and  
accounts left with any clerk  
in court, pursuant to an or-  
der of court, or referred to  
in any of the pleadings, for  
each sheet 4*d.*

0 0 4

For every attendance to pro-  
duce such deed, papers, let-  
ters or accounts for the ad-  
verse party to inspect if no  
copy be taken

0 6 8

But if any copy of such deeds, papers, &c. be  
taken, then nothing is to be taken for inspection or  
attendance thereon:

*l. s. d.*

For every *certiorari*, *procedendo*  
and *superseideas*

0 8 8

	<i>l. s. d.</i>
Viz. duty	0 1 6
Seal	0 0 6
Sworn clerk's fee	0 6 8
	—
	0 8 8

That the sworn clerks and writing clerks do ob-  
serve and perform the several rules and regulations  
following, *viz.*

That all copies of schedules to answers or other  
proceedings which contain accounts and inventories  
be written in three columns; the first or outer co-  
lumn, and the third or last column whereof, are to  
contain respectively the dates and sums in figures,  
as they are respectively written in the ingrossment

G 4 . of

**Fees.**

of such schedules, and the middle column to contain four words in a line of the facts or matters charged in such accounts or inventories.

Where any person intitled to priyilege of parliament, pursuant to the act of parliament of the twelfth and thirteenth of King *William* the Third, has been served with an office-copy of the bill, such person shall not be obliged to take out or pay for any other copy of such bill upon his appearance thereto.

### **OFFICE OF THE CLERKS OF THE INROLLMENTS.**

That the clerks of the inrollments, their deputies and clerks, do not demand or take any greater fees or rewards for the business done, or to be done in this office, than the fees or rewards following, *viz.*

For the inrolling of every deed,  
writing or conveyance for  
every roll or press, each press  
containing ninety lines, and  
each line not less than fourteen  
words, one with another

*l. s. d.*

— o 10 0

*Viz.* to the clerks of the inroll-  
ments — o 5 o  
To the deputy-clerks — o 5 o

*l. s. d.*

— o 10 0

For every deed inrolled in this  
office there is likewise paid

— o 5 4  
*Viz.*

l. s. d.

Viz. to the Master of the Rolls o 2 0

To the deputy-clerk for in-  
dorsing and certifying — o 3 4

o 5 4

l. s. d.

For inrolling every recognizance  
without condition —

o 4 0

For inrolling every recogni-  
zance with condition, if  
short — —

o 6 0

But if the condition be long, then according to  
the length, in proportion to 10 s. for a whole  
pres.

l. s. d.

Out of which is paid to the  
Master of the Rolls for every  
recognizance — o 2 0

And the residue belongs to the clerks of the in-  
rollments, or their deputies.

l. s. d.

For vacating every recognizance o 13 4

l. s. d.

Viz. To the Master of the Rolls o 6 8

To the clerks of the inrollments o 3 4

To the deputies — o 3 4

o 13 4

## TO THE DEPUTY-CLERKS.

For copying any deed, wri-  
ting or recognizance inrolled

8 d.

**Fees.**

	<i>l.</i>	<i>s.</i>	<i>d.</i>
8 d. per sheet, each sheet containing ninety words —	0	0	8
For certifying the copy of a deed to be a true copy —	0	2	0
For every attendance on the court with a Roll —	0	6	8
For every search for a deed in-rolled, not exceeding one year — — —	0	1	0
For every search for a longer time than one year, for each year after the first —	0	0	3

But when the bill is found, the party who pays for the search, is to have liberty of reading it without further fee.

### THE OFFICE OF THE CLERK OF THE HANAPER.

That the clerk of the hanaper, his deputy and clerks, do not demand or take any greater fees or rewards for the particular matters and things herein after mentioned, done or to be done in this office, than the fees or rewards following, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For a commission of rebellion	0	4	4
The King — — —	0	2	0
Clerk of the hanaper — — —	0	2	4
	0	4	4
A brief or duplicate thereof — — —	0	6	6
The King — — —	0	2	0
Sealer — — —	0	0	6

Chaff.

## Fees.

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	L.	s.	d.
Chaff-wax	—	0	1 0
Examiner	—	0	0 8
Clerk of the hanaper	—	0	2 4
		<hr/>	<hr/>
	0	6	6

## l. s. d.

A dedimus to the clerk of the hanaper	—	—	0 4 6
A commission of appeal from the Admiralty	—	—	0 7 2

## l. s. d.

The clerk	—	—	0 2 0
Six clerk	—	—	0 1 8
Clerk of the hanaper	—	—	0 3 6
		<hr/>	<hr/>
	0	7	2

A commission of policies of insurance	—	—	0 7 2
The King	—	—	0 2 0
Six clerk	—	—	0 1 8
Clerk of the hanaper	—	—	0 3 6
		<hr/>	<hr/>
	0	7	2

## l. s. d.

A commission of bankruptcy	—	—	0 12 6
The King	—	—	0 2 0
Six clerk	—	—	0 3 4
Sealer	—	—	0 1 0
Chaff-wax	—	—	0 1 0
Examiner	—	—	0 0 8
Clerk of the hanaper	—	—	0 4 6
		<hr/>	<hr/>
	0	12	6

A com.

## Fees.

	l. s. d.
A commission of bankruptcy renewed; clerk of the hanaper —	○ 6 3
A supersedeas of a commission of bankruptcy, clerk of the hanaper —	○ 1 0
A commission of inquiry of lunacy or idiocy —	○ 9 2

	l. s. d.
The King —	○ 2 0
Six clerk —	○ 1 8
Clerk of the hanaper —	○ 5 6
	<hr/>
	○ 9 2

A custody or a revocation of a lunatick or idiot —	○ 14 0
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	l. s. d.
The King —	○ 2 0
Six clerk —	○ 3 4
Clerk of the hanaper —	○ 8 8
	<hr/>
	○ 14 0

An exemplification —	1 8 10
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	l. s. d.
The King —	○ 16 4
Chancellor —	○ 2 0
Master of the Rolls —	○ 6 8
Sealer — —	○ 0 8
Chaff-wax — —	○ 0 8
Clerk of the hanaper —	○ 2 6
	<hr/>
	1 8 10

Every

**Fees.**

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	<i>l. s. d.</i>
Every <i>inspeximus</i> from the six clerks office to the clerk of the hanaper	0 0 4
From every other office, the clerk of the hanaper	0 0 4
A commission of appeal or adjuncts	1 7 2
	<i>l. s. d.</i>
To the King	0 16 4
Chancellor	0 2 0
Master of the Rolls	0 2 0
Six clerk	0 3 4
Sealer	0 0 4
Examiner	0 0 8
Clerk of the hanaper	0 2 6
	<hr/>
	1 7 2

A pardon of course for one name      **10 8 0**

	<i>l. s. d.</i>
Viz. To the King	0 16 4
Chancellor	0 2 0
Master of the Rolls	0 2 0
Six clerk	0 3 4
Clerk of the hanaper	0 4 4
	<hr/>
	1 8 0

**THE KEEPER OF THE RECORDS IN THE TOWER.**

That the said officer or his deputy do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

For every particular search, or for several searches relating to the same matter,

**Fees.**

	L. s. d.
matter, if made within four terms inclusive	0 10 0
For every sheet copied	0 1 0
For the master or deputy's hand to each copy	0 2 0
For examining any old copy under the master or his deputy's hand	0 2 6
For every record carried out of the office to either house of parliament, or to any of the courts of judicature	1 0 0

**THE PETTY-BAG OFFICE.**

That the clerks of the petty-bag do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	L. s. d.
For every attachment of privilege	0 1 0
For drawing and ingrossing all declarations, pleas and replications, according to the length for each sheet	0 1 0
Entering the rule to answer with the six clerk, and on the roll in the petty-bag	0 2 0
For entering every peremptory rule to answer, rule to reply, rejoin or join in demurrer	0 1 0
For entering every common imparlance with the six clerk and in the petty-bag	0 1 0
For every special imparlance entered there	0 2 0
For drawing and ingrossing every confession of a judgment	0 2 0

	l. s. d.
For signing, entering and making up the record of every judgment, if short, If long, then in proportion to 1l. 6s. 8d. for every skin — — —	0 10 0
For ingrossing the record of an issue or demurrer, proportionably for each skin, 1l. 6s. 8d. — — —	1 6 8
For every continuance — — —	1 0 0
For every <i>venire facias</i> to the Master of the Rolls — — —	0 6 8
For the writ and seal — — —	0 10 6
For every <i>venire, scire facias</i> and seal	0 5 6
For all special commissions of inquiry, <i>scire facias</i> to revoke letters patent, <i>scire facias ad computandum, andita</i> <i>querela, re-extents,</i> and all other judi- cial writs — — —	0 12 6
And (otherwise as they may arise in length) for each skin — — —	1 6 8
For every <i>liberate</i> upon a statute-staple, to the Master of the Rolls — —	0 13 4
For drawing and ingrossing the writ, en- tering and filing the extent and sta- tute, and for the seal — — —	1 0 3
And if very long, after the rate for every skin — — —	0 6 8
For drawing all special writs, commis- sions, records of issues or demur- fers and pleadings, as traverses, <i>mon- strans le droit,</i> and such like for every sheet — — —	0 1 0
For entering the <i>vocate</i> of every judg- ment, or statute staple and search —	0 11 4
For every writ of <i>dedimus potestatem</i> to take the acknowledgment of satis- faction of such judgment or statute in the country — — —	1 6 8
	For

## Fees.

	l. s. d.
For ingrossing acknowledgment, and filing every bail — — —	o 6 8
For taxing every bill of costs — — —	o 2 0
For every <i>certiorari</i> to remove acts of parliament — — —	o 10 6
For every <i>certiorari</i> to remove records out of any other court — — —	o 7 2
For every <i>mittimus</i> to send such records into any other court — — —	o 7 2
For the transcript of such records as it may arise in length, each skin — —	i 6 8
For filing all judicial writs, special com- missions, writs <i>de virida et coronator</i> , <i>eligendo</i> , commissions to swear justices of the peace and sheriffs, decrees upon the statute of charitable uses, and all other records, and writs, and for the entry thereof — — —	o 2 6
For the search of every record (without paying any further fee for taking the record down, or a sight of the same)	o 1 0
For the copies of all records, for each sheet — — —	o 0 8
The officer's hand to the examination of every record — — —	o 2 0
For drawing and signing every certificate under the officer's hand — — —	o 2 6
For every writ of execution of an order or decree upon the statute of chari- table uses — — —	o 10 6
And as it arises in length, proportion- ably for each skin — — —	i 6 8
For every attachment of contempt and proclamation — — —	o 2 10
For every commission of rebellion — —	o 18 8
For every injunction — — —	i 2 6
For every commission to examine wit- nesses,	

l. s. d.

heffes, and for the oaths annexed to such commission, pursuant to an order of court made the ninth of <i>Februry</i> in the eighth year of King <i>George the First</i>	—	0 12 10
For every rule for publication, and entering it on the roll	—	0 1 0
For every confirmation of a decree upon the statute of charitable uses	—	1 6 8
If long, then for the drawing each sheet	—	0 0 8
For the inrolling thereof, each sheet	—	0 0 8
For every exoneration of a decree upon the statute of charitable uses	—	0 6 8
And if long, then for drawing and inrolling as for a confirmation		
For a fee in every cause for every term wherein any business is done in this office	—	0 3 4
For the transcript of every record sent into the King's Bench for trial, for each skin	—	1 6 8
For the exemplification of any record for each skin	—	1 6 8
For the docquet	—	0 1 0
For filing the qualification of any member of parliament, pursuant to the statute of the ninth of Queen <i>Anne</i> , the fee is settled by the statute at	—	0 2 0
For attending the court of Chancery at <i>Westminster</i> with the record of a demurrer, and reading it in order to pay a <i>concilium</i> thereon	—	0 6 8
For the re-examination of an old copy of any record, for each sheet	—	0 0 1
For every <i>dedimus</i> to swear a master extraordinary in <i>Chancery</i> , when made out from this office	—	0 13 4
VOL. II.	H	Every

**Fees.**

Every skin for which a fee of 1*l.* 6*s.* and 8*d.* is allowed in this office ought to contain twenty sheets; each sheet consisting of seventy-two words; and all the fees before mentioned are exclusive of the stamp duties.

For attending with any record out of the office, the clerk attending is to be paid a reasonable fee, according to the time of such attendance.

**FEES paid at the PETTY-BAG OFFICE for  
BISHOPS-PATENTS made out there.**

	<i>l. s. d.</i>
For every <i>conge d' elire</i> for the election of a new bishop, upon the vacancy of any bishopric, as follows	— 11 4 6

To the Master of the Rolls	<i>l. s. d.</i> 1 0 0
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To the Lord Chancellor's gen- tleman	<i>l. s. d.</i> 1 6 8
---	-----------------------

To the clerks of the petty-bag for drawing, ingrossing, in- rolling and examining the patent, and for the docquet	<i>l. s. d.</i> 8 17 0
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	<i>l. s. d.</i> 11 4 6
--	------------------------

For the royal assent to such election	<i>l. s. d.</i> 12 4 6
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To the Master of the Rolls	<i>l. s. d.</i> 2 0 0
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To the Lord Chancellor's gen- tleman	<i>l. s. d.</i> 1 6 8
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To the clerk of the petty-bag for drawing, ingrossing, in-	<i>l. s. d.</i>
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rolling

**Fees.**

<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
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Rolling and examining the  
patent, and for the docquet 8 17 10

12	4	6
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For the patent of assistance and restitu-  
tion of temporalities ————— 28 4 6

<i>l.</i>	<i>s.</i>	<i>d.</i>
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To the Lord Chamberlain 5 0 0

To the Master of the Rolls 7 10 0

To the Lord Chancellor's gen-  
tleman ————— 1 6 8

To the chaff-wax ————— 0 3 4

To the clerks of the petty-bag,  
for drawing, ingrossing, in-  
rolling and examining the  
patent of assistance, and for  
the docquet, and writs of re-  
stitution ————— 14 4 6

28	4	6
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or every comptroller's, searcher's, un-  
der-searcher's, and King's waiter's  
patents ————— — 10 0 0

<i>l.</i>	<i>s.</i>	<i>d.</i>
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To the Master of the Rolls 0 6 8

To the Lord Chancellor's gen-  
tleman ————— 1 6 8

To the clerks of the petty-bag  
for drawing, ingrossing, in-  
rolling and examining the  
patent; and for the docquet 8 6 8

10	0	0
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*An Account of such Business as particularly belongs  
to the Senior-Clerk.*

	l. s. d.
For the administering of the oath of admission to the keeper of the records of the Tower, and clerk of the bankrupts, and inrolling the admission	5 5 0
For inrolling the surrender of every examiner and six clerk, admission of and swearing in the new one, and making a <i>constat</i> thereof	3 3 0
For swearing the deputy-clerks of the enrolments	3 3 0
But for the other officers (except solicitors) whose admittances are inrolled in this office	2 2 0
For making out of every certificate of a peer of <i>Scotland</i> taking the oaths in <i>England</i> to vote by proxy	0 10 0
As for the administering of the oaths in court, the fees are settled by an act of parliament, at	0 2 0
For the writ of summons on the call of a new parliament	0 7 2
For the commission for the electing sixteen peers of <i>Scotland</i>	5 0 0
For ruling and other petty charges besides vellum	0 14 6
For settling the precedence of the great officers of state and the order of the nobility, ingrossing of the pacon, which is the recital of the several writs to each particular Lord, Spiritual and Temporal, that has right of sitting, according to their station, in respect of their great offices or creation; toge- ther	

Fees.

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l. s. d.

ther with the several writs of the sheriffs of counties, cities and towns having sheriffs, and to the several Scotch districts; and to the Master of the Rolls, the Judges, Serjeants, Attorney and Solicitor General, and Counsel attending upon that occasion

100 0

The three clerks of this office are intitled to an ancient fee or allowance out of the hanaper of two rolls of parchment in every term,

THE SUBPOENA OFFICE.

That the patentees of the said office, or their deputy or deputies, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

l. s. d.

For every common *subpæna*, over and above the stamp-duties, and 6d. paid to the patentees of the Crown, for the sealing thereof —

0 2 0

for every common *subpæna* renewed

0 1 6

or every special *subpæna* (to wit) *spa. ad offendend. causam, scire facias, et ducens tecum*, over and above duty and seal —

0 6 8

for every special *subpæna* renewed

0 3 4

for every loose label —

0 0 6

Out of which fees above mentioned, the present deputy claims, and takes to his own use,

H 3

Out

## Fees,

	l.	s.	d.
Out of every subpoena <i>scire facias et ad offendend. causam</i>	—	0	5
Out of every subpoena <i>scire facias et ad offendend. causam</i> renewed	—	0	2
Out of every subpoena <i>ducens tecum</i>	—	0	0
Out of every common subpoena renewed	—	0	0
For every loose label	—	0	0

## THE SIX-PENNY WRIT OFFICE.

It is hereby declared, that the patentee or his deputy, ought not to demand or take any fee for sealing of writs for privileged persons, or for suitors in *forma pauperis*, or for renewed writs.

## THE OFFICE OF CHAFF-WAX.

That the officer called the chaff-wax or his deputy do not demand or take any greater fees or rewards for the business done or to be done in the office, than the fees or rewards following, viz.

His wages or fee of two pence half-penny a day, payable by the clerk of the hanaper.

	l.	s.	d.
For his salary payable out of the hanaper, the yearly sum of	—	360	0
From the clerk of the hanaper every year, for fowel, oil, and other necessities for tempering the wax for the Great Seal	—	4	5

And one shilling and four-pence a day board wages.

From

From the clerk of the hanaper to one of his deputies fifteen pounds a year for travelling charges upon the King's business.

From the clerk of the hanaper the casual fees following, *viz.*

	l. s. d.
For every brief	— 0 1 0
For every bankrupt	— 0 1 0
For every exemplification	— 0 0 8
For every presentation	— 0 0 4
For every office for life	— 0 0 4
For every special pardon	— 0 0 4
For every perpetuity	— 0 1 0

And the clerk of the presentations,

For every presentation	— 0 1 0
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From the clerk of the crown in Chancery the casual fees following, *viz.*

	l. s. d.
For the creation of a Prince of Wales	3 7 6
For the creation of every Duke, Marquis, Earl, Viscount and Baron, each	1 2 6
For the creation of a Baronet	0 10 0

From the lessee of the six-penny writ duty 50*l.* a-year by four equal payments at the end of every term, which is granted to the chaff-wax for the time being by King Charles the First, by his letters patent, bearing date the eighth day of October in the third year of his reign.

## Fees.

From the said lessee to the six-penny  
writ duty to the two deputies in this  
office, at the end of every term, each 2 0 0

From the Lord Chancellor's purse-bearers the  
following fees, viz.

	l. s. d.
For every private seal	0 10 0
For every small writ at a private seal	0 0 3

That the sealer or his deputy do not take or de-  
mand any greater fees or rewards, for the business  
done or to be done in this office, than the fees or  
rewards following, viz.

From the patentee of the six-penny writ  
duty, a yearly allowance of 83 6 8

Payable at the end of every term, by equal  
payments.

From the said patentee to the six-penny  
writ duty, to the deputy in this of-  
fice, 40s. at the end of every term,  
*per term* 2 0 0

From the hanaper office four pence half-penny  
by the day salary, and one shilling and four pence  
by the day board wages, quarterly.

And for a table, bags, sponges, scarlet  
cloth and other necessaries by him  
provided for the seal 10 15 0  
And for a winter livery 1 0 0  
And also for riding charges and expences

in following the great seal into the country (which the present sealer allows his deputy) —

150 0

Fees which the clerk of the hanaper also receives and accounts for to this officer.

	l. s. d.
For a brief	0 0 6
For a commission of bankrupt	0 1 0
An exemplification	0 0 8
Any church preferment	0 0 6
Office for life or years	0 0 4
Commissions of appeal	0 0 4
Special licence for fourteen years	0 0 4
Special pardon	0 0 8
A perpetuity	0 0 8

Fees received by the clerk of the crown in Chancery, which he accounts for to the sealer.

	l. s. d.
Prince of Wales patent	3 7 6
For every Baron, Viscount, Earl, Marquis and Duke, each title	1 2 6
For every Baronet	0 10 0
For every patent when the patentee is sworn in before the Lord Chancellor	0 5 0
The sealer receives from the purse-bearer, for every private seal	0 7 6
For every small writ sealed at a private seal	0 0 3
For every presentation from the clerk of the presentations	0 1 0

## THE USHER OF THE COURT.

That the said usher or his deputy do not demand or take any greater fees or rewards, for the business done or to be done in this office, than the fees or rewards following, viz.

	L. s. d.
Four pence half-penny <i>per diem</i> to be issuing and paid out of the hanaper	0 0 4
Twenty shillings for a livery once by the year	1 0 0
For laying out of all records of Henry the Seventh's time, and before	0 0 6
For laying out of every parliament roll, confirmation roll, judgment roll, fine roll, and every bundle <i>virtute officii</i>	0 0 6
For all other records and cancellations, for each one	0 0 4
For carrying out every record or evidence, by the command of the Lord Chancellor or Master of the rolls	0 3 4
For every exemplification, Sheriff's patent and escheator's patent	0 0 4
For every decree and dismissal signed	0 0 4
For every perpetuity out of the hanaper	0 0 4
For every writ of bastardy, for every name	0 1 0
At the making of every master of the court, his hood	0 3 4
At a call of serjeants at law, a livery, and for each oath	0 3 4
For receiving every parcel of evidence into court, entering them into a ledger-book, and for making a certificate thereof	0 2 0
	For

	l. s. d.
For delivering out every parcel of evidence —	0 2 0
For certifying the not bringing in of money or evidence —	0 2 0
For every cause heard at <i>Westminster</i> , if the bill is dismissed, the defendant pays —	0 2 9
If a decree for the plaintiff, the plaintiff pays —	0 2 0
If an issue at law, or an account is directed, each side pays —	0 2 0
For every guardian admitted in court at <i>Westminster</i> —	0 2 0
For every cause heard in court, at the rolls in term time, if the bill is dismissed, the defendant pays —	0 2 0
If a decree for the plaintiff, the plaintiff pays —	0 2 0
If an issue at law, or an account is directed, each side pays —	0 2 0
For every guardian admitted in court, at the Rolls in term —	0 1 0
And for all copies made of such evidences as remain in the usher's custody, for every sheet which shall be ordered and unwastefully written, each of which sheets ought to contain ninety words —	0 0 8

## THE OFFICE OF PURSE-BEARER.

That the said purse-bearer or his deputy do not demand or take any greater fees or rewards, for the particular matters and things herein after mentioned, done or to be done in this office, than the fees or rewards following, viz.

Recepi

	l. s. d.
Recepi fees for patents of honour, each title	5 5 0
For every remainder	2 12 6
Recepi fees for grants of charters	5 5 0
Recepi fee for Archbishop's instruments, each	2 12 6
Recepi fee for Baronet's patents	2 12 6
For every remainder	1 6 6
Recepi fee for Governor's commissions	2 12 6
Recepi fee for bishop's instruments, deans, prebends and other church preferments, and of all offices and grants whatsoever	1 6 6

## DOCQUET FEES.

Special commissions made out of the petty-bag, each	1 1 0
Exemplifications and pardons of course, each	0 10 0
Sheriff's patents	0 4 0
Deans, prebends, archdeacons, custodies of lunaticks, each	0 3 0
Presentations, commissions of bankruptcy, supersedesas of commissions of bankruptcy, briefs, writs of inquiry of lunaticks	2 0 0
For every renewed commission of bankrupt	0 1 0
Commissions of appeal and rebellion, each	0 1 0
Out of every 40 s. received for every private seal	0 17 6
Out of the 3s. received for every writ sealed,	

## Fees.

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	l. s. d.
sealed, when the seal is opened on any other occasion —	0 2 0
Entering a caveat —	0 5 0
For a petition answered —	0 12 6

For filing and copying affidavits, and the manner of writing such copies, the same as is after mentioned under the head of secretary of the commission of bankrupts.

	l. s. d.
For application for the sheriff's roll, in order for the alteration of a sheriff's name, when a person is pricked for sheriff, and is afterwards excused, and another named in his room	1 1 0

## THE OFFICE OF THE PRINCIPAL SECRETARY TO THE LORD CHANCELLOR.

That the said principal secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	l. s. d.
For every petition for setting down exceptions, pleas or demurrs	0 10 0
For every petition for re-arguing exceptions, pleas or demurrs	0 12 6
For every petition for setting down a cause for hearing —	1 0 0
For every petition for re-hearing a cause	1 5 0

Where the petition is for several pleas or demurrs, or in cross causes, then the fees in all the matters

## fees.

matters aforesaid are double, and are treble if three.

	l. s. d.
For a warrant to the serjeant at arms, the messenger or the warden of the Fleet	0 15 0
For every petition for a <i>Ne Exeat Regnum</i>	0 12 6
For every petition for a letter to any peer of this realm, and for the letter	1 5 0
For every reference upon a petition to the Lord Chief Justices or other judges, concerning by-laws	0 12 6
For a petition to have by-laws signed	0 12 6
For a petition for an <i>homine replegiando</i> , or touching the custody of an infant, or other matter where no cause is depending	0 12 6
For backing every <i>babeas corpus</i>	0 2 0
And every writ of <i>Ne Exeat Regnum</i>	0 2 6
For every petition for a <i>Supplavit</i>	0 12 6
Upon application for the roll, in order to the alteration of a sheriff's name, when a person is pricked for sheriff, and is afterwards excused, and another named in his room	1 1 0
For taxing bills of costs upon writs of error in the Exchequer chamber	1 0 0
For every petition not herein particularised, relating to the proceedings in a cause	0 10 0
For every summons on an order of reference from his Majesty	0 12 6
For every report on every reference from his Majesty	1 5 0
For a caveat	0 5 0

For

## Fees.

1111

For copies of affidavits, according to their  
length, the like fees as in the affidavit office.

## THE OFFICER OF RECEIVER OF THE FINES.

That the officer for receiving the fines do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

	L s. d.
or an order made on hearing the parties	—
or an order upon a petition to issue a writ for discharging or electing a coroner or verdurer, and for an undertaking of regular notice, and filing the same on an affidavit	1 0 0
or an order upon any other petition	0 12 6
or a caveat	0 5 0

For filing and copying affidavits, the same fees and rules already laid down to be observed by the Lord Chancellor's secretary of the commissions of bankrupts, are to be observed by this officer.

or every special <i>dedimus</i> in one county	—	0 1 0
in more counties, for each county	—	0 1 0
or every renewed <i>dedimus</i>	—	0 2 0
or every other renewed writ	—	0 1 0
or every cursitor sworn in upon death	20 0 0	
or every cursitor sworn in upon sur- render	—	10 0 0

THE

THE OFFICE OF SECRETARY OF DECREES AND INJUNCTIONS.

That the said secretary do not demand any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

L. s. d.	
For examining a decree or dismission to be signed by the Lord Chancellor to be inrolled in each cause or dismission	0 7 6
For entering a caveat against such signing, and giving notice thereof to the parties concerned in each cause	0 5 0
For Lord Chancellor's order on a petition against signing and inrolling a decree	0 12 6
For Lord Chancellor's order on a petition for inrolling a decree after the time limited for inrolling is lapsed, and entering the same in each cause	0 10 0
For examining the order for an injunction, with the copy of the writ, and Lord Chancellor's signing the said copy and writ before it passes the seal	0 4 4

THE OFFICE OF SECRETARY OF THE LUNATICKS.

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

For

## Fees.

113

	L.	s.	d.
or every order made upon hearing —	1	7	6
or a petition for grant of a custody —	1	7	6
or a petition for a writ <i>de lunatico inquirendo</i> , or for any other matter, except as above —	0	15	0
entering a caveat —	0	5	0

For filing and copying affidavits, the same fees and rules already laid down to be observed by the secretary of commissions of bankrupts, are to be observed by this officer.

	L.	s.	d.
or a copy of orders made in court, or of petitions, the first side —	0	1	6
or every other side —	0	1	0
or setting down every petition for hearing —	0	1	0

## THE OFFICE OF THE CLERK OF THE CUSTODIES OF IDIOTS AND LUNATICKS.

That the said officer or his deputy do not take any fee or reward for attending the seal, hanaper, clerk of the docquets, with any grant of the person or estate of idiots or lunaticks, or any revocation thereof, for not attending the seal, hanaper, clerk of the docquets, with any commission of idiocy or lunacy.

## THE OFFICE OF SERJEANT AT ARMS:

That the said officer or his deputy do not demand or take any greater fees or rewards for the business

**THE OFFICE OF SECRETARY OF DECREES AND INJUNCTIONS.**

That the said secretary do not demand any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

	L. s. d.
For examining a decree or dismission to be signed by the Lord Chancellor to be inrolled in each cause or dismission	0 7 6
For entering a caveat against such signing, and giving notice thereof to the parties concerned in each cause	0 5 0
For Lord Chancellor's order on a petition against signing and inrolling a decree	0 12 6
For Lord Chancellor's order on a petition for inrolling a decree after the time limited for inrolling is lapsed, and entering the same in each cause	0 10 0
For examining the order for an injunction, with the copy of the writ, and Lord Chancellor's signing the said copy and writ before it passes the seal	0 4 4

**THE OFFICE OF SECRETARY OF THE LUNATICKS.**

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

For

## Fees.

113

	L	s.	d.
For every order made upon hearing —	1	7	6
For a petition for grant of a custody —	1	7	6
For a petition for a writ <i>de lunatico inquirendo</i> , or for any other matter, except as above —	0	15	0
Entering a caveat —	0	5	0

For filing and copying affidavits, the same fees and rules already laid down to be observed by the secretary of commissions of bankrupts, are to be observed by this officer.

	L	s.	d.
For a copy of orders made in court, or of petitions, the first side —	0	1	6
For every other side —	0	1	0
For setting down every petition for hearing —	0	1	0

## THE OFFICE OF THE CLERK OF THE CUSTODIES OF IDIOTS AND LUNATICKS.

That the said officer or his deputy do not take any fee or reward for attending the seal, hanaper, or clerk of the docquets, with any grant of the person or estate of idiots or lunaticks, or any revocation thereof, for not attending the seal, hanaper, or clerk of the docquets, with any commission of idiocy or lunacy.

## THE OFFICE OF SERJEANT AT ARMS:

That the said officer or his deputy do not demand or take any greater fees or rewards for the business

## Fees.

business done or to be done in this office, than the fees or rewards following, viz.

	l. s. d.
Travelling each mile	0 1 0
Searching each day	0 13 4
Caption fee of a Knight	5 0 0
Caption fee of a gentleman or common person	3 6 8
Custody fee each day	0 13 4
The return of process against a Knight	5 0 0
The return of process against a gentleman or common person	3 6 8

He is also paid the fee of 3 s. a day out of the hanaper.

### THE OFFICE OF MESSENGER OR PURSUIVANT ATTENDING THIS COURT.

That the messenger or pursuivant, or his deputy, do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

	l. s. d.
For summoning a new parliament, as to that part of Great Britain, called England	176 0 0
And for summoning a new parliament as to Scotland	100 0 0
Travelling each mile for all business, except summoning a new parliament	0 0 0
Searching each day	0 6 8
Caption fee of a Knight	2 10 0
Caption fee of a gentleman or common person	1 13 4
Custody	

**Fees.**

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	l. s. d.
Custody for each day —	0 6 8
Return of a warrant —	1 13 4
From the clerk of the hanaper for every charter that passes the great seal —	0 5 0
From the clerk of the hanaper <i>per diem</i> —	0 3 0
From the assignee of the patentee of the six-penny writ duty <i>per term</i> —	0 10 0

**THE OFFICE or SECRETARY OF THE APPEALS.**

That the secretary of the appeals do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

	l. s. d.
For entering a caveat against passing a commission —	0 6 8
For an order made on hearing parties —	1 0 0
For an order on any petition —	1 0 0
Office copy thereof —	0 10 0
For filing an affidavit, first side —	0 2 0
For every other side —	0 0 8
For copying an affidavit, first side —	0 2 6
Every other side —	0 0 8
For a copy of a report on reference, touching a commission of review —	2 15 0
For an order on any petition relating thereto —	2 0 0
Office copy thereof —	1 0 0

110 Fees.

THE OFFICE OF CLERK OF THE APPEALS.

That the clerk of the appeals do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees & rewards following, viz.

For ingrossing a commission of appeal	2 10 0
Out of which said sum is paid by this officer to the hanaper 1 l. 7 s. 2 d. and to the purse-bearer 1 s.	
For ingrossing a commission of adjuncts	3 0 0
Out of which is paid by this officer to the hanaper 1 l. 7 s. 2 d. and to the purse-bearer 1 s.	
For ingrossing a commission of review	5 0 0
Out of which is paid by this officer to the hanaper 1 l. 7 s. 2 d. and to the purse-bearer 1 s.	
For ingrossing a commission of appeal from the court of Admiralty	1 10 0
Out of which is paid by this officer to the hanaper 7 s. 2 d. and to the purse-bearer 1 s.	
For ingrossing a pauper commission of appeal, out of which nothing is paid	0 10 0

**Fees.**

**I. s. d.**

If any of the said commissions (except a pauper commission) do very much exceed the usual length, more — 0 7 6

**THE GENTLEMEN OF THE CHAMBERS  
ATTENDING THE GREAT SEAL.**

That the said gentlemen of the chambers do not demand or take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, viz.

**I. s. d.**

For every Peer's patent by promotion or creation, each title	—	—	6 0 0
Curſitor's fees (that is) swearing into offices	—	—	5 0 0
Baronet's patent	—	—	3 0 0
Swearing every curſitor	—	—	5 5 0
Fiat for a Master in Chancery extraordinary	—	—	5 10 0
By-laws passed by any body-corporate	—	—	5 5 0
Small writs every last seal day paid by the lessee of the six-penny writ duty	—	—	3 15 0
Every bishop's patent by the clerk of the petty-bag office	—	—	1 6 8
If an archbishop	—	—	2 13 4
Every custom-house patent by the clerk of the petty-bag	—	—	1 6 8
Clerk of the leases for each skin pays	—	—	1 6 8
Cause by consent heard	—	—	1 0 0
Private attendance	—	—	1 0 0
Petition heard	—	—	0 10 0
Guardian admitted in the chamber, and on certain days in court, to wit, seal days and petition days	—	—	0 10 0
	I 3		Out

**Fees.**

	l. s. d.
Out of the forty shillings on every private seal	0 5 0
Dispensation or commendam	0 5 0
Papers left for Lord Chancellor's perusal	0 5 0

**THE OFFICE OF MASTER IN CHANCERY EXTRAORDINARY IN THE COUNTRY.**

That a master extraordinary do not demand or take any greater fees or rewards for the busines done or to be done in this office, than the fees or rewards following, *viz.*

	l. s. d.
From every person who shall swear to an affidavit before him	0 2 0
For the acknowledgment of every deed acknowledged before him	0 5 0
From every recognizor that shall enter into a recognizance before him	0 2 6

If any of these matters are transacted at the place of the officer's residence, or in any market town frequented by him, he is to take no greater fees or rewards than are above-mentioned; but if he is obliged to travel for that purpose at the desire of any party, then he may receive a reasonable reward from such party according to the length of his journey.

**THE USHER OF THE HALL AT THE LORD CHANCELLOR'S.**

That the said usher do not demand or take any greater fees or rewards for the busines done or to be done than the fees or rewards following, *viz.*

Upon

	l. s. d.
Upon hearing a cause wherein no account or issue is directed	0 10 0
Upon hearing a cause wherein an account or issue is directed	1 0 0
Upon hearing cross causes wherein no account or issue is directed	1 0 0
Upon hearing cross causes wherein an account or issue is directed in one of them	1 10 0
When an account or issue is directed in both	2 0 0
Upon re-hearing a cause	0 10 0
Upon re-hearing cross causes	1 0 0
Upon arguing exceptions	0 10 0
But if exceptions are taken on both sides	1 0 0
Upon arguing pleas and demurrers	0 6 0
If a plea stands for an answer with liberty to except, each side pays	0 6 0
Upon admission of a guardian in court	0 10 0
Upon swearing a witness <i>vive voce</i> in court to prove any matter	0 1 6
Upon a master's taking an affidavit in court	0 0 6

## THE CRYER OF THE COURT.

That the said cryer do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

	l. s. d.
For every cause heard at Westminster (only) if the bill be dismissed	0 2 6
If a decree for the plaintiff	0 2 6

	l. s. d.
For an issue at law, or an account be directed, each side pays 10s. out of which he receives —	0 5 0
For every guardian admitted in court	0 1 0
For calling and amercing a sheriff for not returning the process of the court —	0 0 4

On a general call of serjeants at law, a livery gown.

	l. s. d.
On the coming in of a new master in Chancery — — —	0 5 0

*The Deputy of the Warden of the Fleet, or the Lord Chancellor's Tipstaff attending this Court.*

That the said deputy do not demand or take any greater fees or rewards for business done or to be done than the fees or rewards following, viz.

	l. s. d.
On every cause that is heard before the Lord Chancellor in Term-time only, he is entitled to 1 s. which is paid to him by the door-deeper out of the 10s. which is the usual fee paid to the door-keeper — — —	0 1 0

	l. s. d.
For every day on which he travels to execute any warrant in the country, he is allowed for his expences, to be paid him by the party at whose instance the commitment is — — —	0 6 0

	l. s. d.
And for every mile that he travels upon that occasion, his fee is — — —	0 0 6

	l. s. d.
When a prisoner is removed by <i>baberas corporis</i> from the Fleet prison to ap-	pes in

l. s. d.

pear in court, the said deputy is the proper officer to take care of the prisoner, and to conduct him from the Fleet prison to the court of Chancery and back again, the fee is — 0 6 8

### THE OFFICE OF DOOR-KEEPER OF THIS COURT.

That the door-keeper of this court do not take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, *viz.*

In every cause heard at *Westminster*, if the bill is dismissed, the defendant pays this officer a fee of 10*s.* which he distributes as follows,

l. s. d.

	l.	s.	d.
To the usher of the Rolls —	0	2	0
To the cryer of the court —	0	2	6
To the Lord Chancellor's tip- staff — — —	0	1	0
To the Master of the Roll's tipstaff — — —	0	0	6
To the court-keeper —	0	0	6
To the Register's bag-bearer —	0	1	0
His own fee — — —	0	2	6
	e 10 0		

If a decree for the plaintiff, he pays the like fee of 10*s.* distributed as above.

If an issue at law, or an account is directed, the plaintiff and defendant each pay 10*s.* distributed in like proportion,

For

**Fee.**

For every guardian admitted in court at *W<sup>ch</sup>minster*, he receives a fee of 10*s.* which he distributes as follows:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
To the two six clerks then attending in court —	0	3	0
To the usher of the Rolls —	0	1	0
To the crier of the court —	0	1	0
To the Lord Chancellor's tipstaff —	0	1	0
To the Master of the Roll's tipstaff —	0	0	6
To the court-keeper —	0	0	6
To the Register's bag-bearer —	0	1	0
His own fee — —	0	2	0
	0	10	0

For every cause heard in court at the Rolls in term time a fee of 7*s.* and 6*d.* to be divided as follows:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
To the usher of the Rolls —	0	2	0
To the Master of the Rolls —	0	1	0
To the Master of the Roll's tipstaff —	0	1	0
To the usher of the hall at the Rolls —	0	1	0
His own fee — —	0	2	6
	0	7	6

For every guardian admitted in court at the Rolls in term-time, he receives a fee of 6*s.* which he distributes as follows:

	l. s. d.
To the usher	0 1 0
To the porter	0 1 0
To the Master of the Roll's tipstaff	0 1 0
To the usher of the hall, if in the two winter terms	0 1 0
His own fee	0 2 0
	0 6 0

But in *Easter* and *Trinity* terms, when the Master of the Rolls sits in the chapel, the usher of the hall has nothing out of any cause heard, or guardian admitted in term time, which increases this officer's fee 1*s.* in each of the two articles for those terms only.

	l. s. d.
For every witness examined <i>viva voce</i> , either at <i>Westminster</i> , or at the Rolls	0 1 0
For every affidavit sworn before a Master in Chancery sitting in court	0 0 6
For every prisoner brought into court by <i>babeas corpus</i>	0 2 6
At a general or private call of serjeants at law, for every serjeant then called	0 6 8
On the admission of every Master in Chancery	0 6 8
For every deed acknowledged in court to be inrolled	0 1 0
From his Majesty's Attorney-General, a term-fee of	1 10 0
From his Majesty's Solicitor-General, a term-fee of	1 0 0
This officer claims a privilege of set- ting down one cause every term to be heard	

heard before the Lord Chancellor, for which he is paid the usual fee of — — —  
 He also claims the like privilege of setting down one cause each term, to be heard before the Master of the Rolls, for which he is paid the like fee of — — —

L. s. d.  
1 0 0  
D  
I 0 0  
D  
I 0 0  
D

### THE KEEPER OF THE COURT.

That the keeper of this court do not demand or take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, viz,

For every cause heard at *Westminster-hall*, he receives from the party that prevails — — —

L. s. d.  
0 0 6

If an issue at law, or an account is directed, each side pays 6d. — — —

L. s. d.  
0 1 0

For every guardian admitted in court at *Westminster* only — — —

L. s. d.  
0 0 6

### THE OFFICE OF CHIEF SECRETARY OR THE MASTER OF THE ROLLS.

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

Out of the fees paid by every six clerk and examiner, at their respective admissions to their offices — — —

L. s. d.  
10 0 0  
Out  
don  
new

	l. s. d.
Out of the fees paid by every sworn clerk of the six clerks office, and clerk of the petty-bag office, at the times of their respective admissions to their offices	2 0 0
Out of the fees paid by every waiting clerk attending on the six clerks, at the time of their respective admissions	1 0 0
For entering the name of every under clerk, at the time of his entering into articles with any of the sworn clerks of the six clerk's office, and the date of such articles	1 0 0
For perusing every petition presented to the Master of the Rolls (except those of privileged persons and paupers, and for the setting down of causes to be heard by the Master of the Rolls, and for restoring of causes to the paper when struck out, and for adjourning or re-hearing of causes) writing the order upon it, and presenting the same to the Master of the Rolls for his approbation and signifying, for every petition thus signed	0 5 0
But though such petition shall pray several matters, or though it be in two or more causes between the same parties or some of them, only one fee of 5 s. is to be taken, and no more.	

### THE UNDER SECRETARY OF THE ROLLS.

That the said under secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

Out

## Fees.

Out of the fees paid on the admission  
of every six clerk or examiner

I. s. l.  
2 0 0

Out of the fees paid upon the admission  
of every sworn clerk of the six clerk's  
office, or clerk of the petty-bag  
office

o 10 0

For perusing and writing the order upon  
and presenting to the Master of the  
Rolls for his approbation and signa-  
ture of every petition preferred to  
him for the admission of a plaintiff  
or defendant to prosecute or defend  
*in forma pauperis*, for every such peti-  
tion so signed by his honour

o 5 0

But if the petition be to prosecute in one cause,  
and defend in another, or in several causes, only  
one fee is to be taken.

For entering the name of such cause or  
causes, and the order made on every  
such petition in a book kept for that  
purpose on every such petition signed  
by his honour

o 6 0

For entering the name of the cause or  
causes, and the order made on every  
other petition signed by his honour,  
for which the chief secretary takes  
5s. and for perusing the order upon,  
and presenting such petition in the  
absence of the chief secretary

o 0 0

For procuring to be answered and enter-  
ing the order made on every *pauper*  
petition, after their first admittance

o 1 0

For the like on every petition preferred  
by any person intitled to the privi-  
lege of the court

o 1 0

THE SECRETARY OF CAUSES AT  
THE ROLLS.

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

*l. s. d.*

For setting down a cause for hearing, and drawing and signing a note to the Register, certifying the same (other than for such causes as are set down by the respective officers having a privilege so to do) —	i o o
The like fee for every petition for setting down a cause for re-hearing	i o o

For perusing and presenting every petition, and writing the order signed by his honour for the purposes following, the several fees herein after mentioned, that is to say

*l. s. d.*

On every petition for setting down a cause to be heard at the Rolls, in order to have the bills taken <i>pro confesso</i> — — —	i o o
On every petition for setting down a cause <i>ad requisition. defendantis</i>	i o o
On every petition for restoring a cause to the paper which has been struck out thereof — — —	i o o
And if more than one cause to be struck out, then for such cause restored — — —	i o o
	But

But if any of the business aforesaid be done at the instance of a *pauper* or privileged person, then 5*s.* only instead of one pound — ○ 5 0

For perusing and presenting every petition, and writing the order signed by his honour, for the following purposes, *viz.*

For setting down a cause upon a master's report, or upon an equity reserved, or for further directions 12*s.* and 6*d.* and if two or more causes, the like fee in each cause — ○ 12 6

But if such petition be for a *pauper* or privileged person, then only ○ 1 0

For perusing and presenting every petition, and writing the order signed by his honour for adjourning a cause 10*s.* and if the same be in two or more causes, the like fee in each cause — ○ 10 0

If a *pauper* or privileged person, then only 1*s.* instead of 10*s.* — ○ 1 0

### THE OFFICE OF SECRETARY OF DECREES AND INJUNCTIONS AT THE ROLLS.

That the said secretary do not demand or take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, *viz.*

For presenting the docquet of every decree, or dismissal pronounced by

l. s. d.

his honour to be signed by his honour, in order to the enrolment thereof, and entering the name of the cause or causes, and the date of the decree or dismissal, and the time of signing the docquet by his honour, in a book kept for that purpose      o 2 6  
 For presenting to his honour for his signing, and entering the docquet of every injunction granted by his honour      o 2 0

And if a decree be made, or injunction granted in two or more causes wherein the same parties or any of them are concerned, but one fee for all.

l. s. d.

For entering a caveat against the signing of any decree or dismissal, and giving notice to the parties concerned      o 5 0

### THE OFFICE OF CLERK OF THE CHAPEL AT THE ROLLS.

That the said clerk do not demand or take any greater fees or rewards for the business done or to be done in this office than the fees or rewards following, *viz.*

l. s. d.

For the search of the calendar book for every year      o 1 0

For the copy of all records in the chapel of the Rolls, for every sheet containing fifteen lines, and six words in each line      o 1 8  
 VOL. II.      K      For

For every skin of parchment or vellum exemplified, including a fee of 6*s.* 8*d.* payable to the Master of the Rolls, for each exemplification

1 6 8

But in every such skin, there ought to be written at least sixteen sheets, each sheet computed at ninety words.

For every cancellation 10*s.* whereof there is due to the Master of the Rolls 6*s.* and 8*d.*

0 10 0

For the re-examination of every copy written out of the records in the Rolls, for every sheet

0 0 1

For the clerk's hand to all the copies taken from the Rolls

0 2 0

For the attendance with every record out of the rolls, by order

1 0 0

### THE GENTLEMEN OF THE CHAMBERS ATTENDING THE MASTER OF THE ROLLS.

That the said gentlemen of the chambers do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, *viz.*

In every cause heard by consent in the Rolls, in which a decree is made  
For every cause heard at the Rolls after term.

1. s. A

Up

0 16 0

Up

R

0 8 0

Up

If the bill be wholly dismissed, the plaintiff is to pay nothing, but the defendant or defendants

more

more than one) pay these fees; but if there be a decree for the plaintiff, either for the whole or any part of the demand, and the bill be dismissed as to the other part, then the plaintiff only is to pay them.

If an issue at law, or an account is directed, these fees are paid by both the plaintiff and defendant.

If there be more than one defendant in a cause, there is but one fee to be paid on the part of all the defendants, and if a cause be sent to a master to state any matter specially for the judgment of the court, and no decree pronounced, then no fee is to be paid until the cause comes on again on the master's report.

Upon a re-hearing, the party who takes the deposit pays to the gentlemen of the chambers — — — — — l. s. d. o 8 o

But if the deposit be ordered to be divided between the parties, then this fee is divided in like proportions.

l. s. d.
On every petition heard at the Rolls whereon an order is made — — — — — o 5 o
Upon the admission of a guardian at the Rolls — — — — — o 5 o
Upon vacating a recognizance at the Rolls — — — — — o 5 o
Upon leaving any papers for his honour's perusal in any cause depending, the party that leaves them pays to the gentlemen of the chambers — — — — — o 5 o

## Fees.

Out of the fees paid by every six clerk and examiner, upon their respective admissions, there is paid to the gen- tlemen of the chamber	5 0 0
Out of the fees paid by every sworn clerk in the six clerks office, or clerk of the petty-bag, upon their respec- tive admissions,	2 0 0

## THE USHER OF THE HALL AT THE ROLLS.

Or That the said usher do not demand or take any greater fees or rewards for the business done or to be done in this office, than the fees or rewards following, viz.

For every cause heard by consent at the Rolls, in which a decree is made	0 2 0
For every cause heard in court at the Rolls after the term	0 1 0

Which fee of 1 s. is paid by the same party, and in the same manner, as the fee of 8 s. before mentioned is paid to the gentlemen of the Chambers.

On every cause heard at the Rolls in Michaelmas and Hilary terms, when the court sits in the Hall	0 1 0
On the admission of a guardian admitted in the hall at the Rolls in those two terms	0 1 0
Out of the fees paid by every six clerk or examiner, on admission	1 0 0

## THE PORTER AT THE ROLLS.

That the said porter do not demand or take any greater fees or rewards for the business done or to be done, than the fees or rewards following, *viz.*

	l.	s.	d.
Upon every cause heard by consent at the Rolls, wherein a decree is made	○	2	○
Upon the hearing of every other cause to be paid by the same persons, and in the same manner as the usher's fee is paid	○	1	○
Upon every petition heard at the Rolls, whereon an order is made	○	1	○
Upon vacating every recognizance	○	1	○
Upon admission of a guardian	○	1	○
Out of the fees paid by every six clerk or examiner, upon admission	1	0	○
Out of the fees paid by every sworn clerk, in the six clerk's office, or clerk of the petty-bag office on ad- mission	○	5	○

## C H A P. III.

*Of publication, and setting down causes; and  
of bearings, rebearings, and appeals. And  
first of publication.*

PUBLICATION in a cause is that power  
or liberty which is given the Six clerks, or  
clerks in court, either by rules or order of court, or  
by consent of parties, to shew the depositions openly,  
and to give out copies of them.

K 3

And

## Of Publication, &amp;c.

And when both the plaintiff and defendant have examined such witnesses as they think proper, and are ready to go to hearing, the clerks in court on both sides may pass publication by consent; which is done by signifying the same in one of the Rule books in the Six clerks office, upon which publication immediately passes. Or where witnesses are examined in court by the examiners, they may give each other rules for publication; first an ordinary rule, to produce witnesses, and then another rule for a day to shew cause why publication should not pass: But if the witnesses are examined on both sides, upon a commission, one rule only is sufficient; and the day given by such rule is a week, which being expired, and no good cause shewn to the contrary, publication passes: And either party that has examined, and would have publication pass, may give the rule.

The cause being at issue, and one side having examined witnesses, but the adverse party having not, nor had a commission; the other party is to give him first a rule to produce witnesses, and after that a rule to pass publication; and if the other side want to examine, they may petition or move the court, and obtain an order to enlarge publication, and for a commission to examine, if in the country; or if in town, they may examine them in the examiner's office; but if they do not examine them within the time limited for enlarging publication, then publication passeth: And such rules for publication are proper to be given where witnesses are examined in court for the plaintiff, or *ex parte* by commission, or where none are examined on either side, to conclude the adverse party from examining.

After examination of witnesses, publication may be stayed or enlarged by motion or petition, on reasonable cause shewn.

The court, on cause shewn, and sometimes on a bare motion, will enlarge publication; but it must be on notice, and upon good reason offered to the court, and upon affidavit shewing the reason why the party could not examine his witnesses sooner; and it is seldom or ever done where it is to put off the hearing of the cause; but where the cause is not set down, or where the party is not served with a *subpæna* to hear judgment, there the court will enlarge publication for asking. In some other cases they will do it, though the cause is set down, and party served to hear judgment; but this, when it is shewn to the court that it is not possible for the cause to come on very soon, and the court will expect the party to appear *gratis* to hear judgment on six days notice to his clerk in court, and pray no day over, and will often oblige him to take no advantage for want of parties at the hearing: This forwards the plaintiff; for if a defendant is made at the hearing, a decree cannot be made absolute till the next succeeding Term. But if the party who moved to enlarge publication, will not agree to appear *gratis*, he is often denied his motion; for it seems he only intends delay, which the court always avoids when it is in their power.

Where publication is actually past, and the depositions delivered out, if the adverse party moves to enlarge publication, he must offer good reasons by affidavit of some material witnesses, and the reasons why they could not attend and be examined before publication passed.

And in this case the party must make oath, and so must his clerk and solicitor, that they have never seen, read, nor been informed of the contents of the depositions taken in the cause, nor will they, &c. till publication is duly past; and on such affidavit it is usual to enlarge the publication, and give the party opportunity to examine witnesses; but he is

limited to a time, and so as not to put off the hearing; and where that is not the case, it would be hard to drive defendant to hear his cause without proof.

There was a remarkable instance in Lord Somers's time, where an artful solicitor got copies of his client's depositions, and immediately went with them to the adverse solicitor, and shewed him the depositions; and to make sure work of it, read them over to him: His adverse party, being ignorant of the rule, told him, they must notwithstanding have an opportunity to examine their witnesses; and soon after bringing his witnesses to the examiner's office, was told they could not be examined, because publication was passed, and the depositions delivered over; the man, being surprized at this, went to his clerk in court to know what he was to do, and being startled at hearing of the affidavit that was requisite, told him the whole story, which being laid before the court, the court enlarged publication, and gave the party an opportunity to examine his witnesses, and the adverse party narrowly escaped commitment for this male practice.

After publication passed, and examination known, court will not give either side leave to examine witnesses. *P. Wil. Rep. 727.*

As concerning publication of depositions taken *de bene esse*, it is when the party is either beyond sea, and not returned, or is dead; in which case, upon producing and proving the register of his death, order may be had by petition or motion for publishing his depositions, and the certificate of the death of the witness must be annexed to the petition. It cannot be done without such order; and the party must shew he died before he could be examined in chief; and the court will not only order the depositions to be published, but to read him as a witness at the hearing, saving just exceptions; and notice is

always to be given to the adverse party hereof. This notice is to prevent surprize, and to give him an opportunity to object as he shall see occasion. And if the witness be beyond sea, and not returned, there must be an affidavit of it, and that the party has not heard from him of such a time, nor does he know whether he is living or dead; and in this case there will be a like order as in the case of a witness who died before he could be examined in chief.

*Note;* Rules are entered with the register in the following manner, together with the date when entered, and the clerk in court's name; but they are to be entered in Term-time only.

*A day is given to the defendant to answer.*

Rules.

*A day is given to the defendant to make a better answer.*

*A day is given to the defendant to produce witnesses.*

*A day is given to the defendant to shew cause why publication should not pass.*

*A day is given to the defendant for passing publication upon a joint commission.*

And observe that these rules must also be entered in the rule book belonging to the Six clerk, where the cause originally began, though the clerk in court who enters them should be of another division; and after they are so entered in the house book, the same are also to be entered with the Register as aforesaid; for which 1*s.* 4*d.* is paid, and then notice thereof is given in writing to the adverse clerk in court.

After a rule is given to pass publication on a joint commission returned; an order, before that rule is expired, may be obtained (on petition to the Master of the Rolls without any affidavit) to enlarge publication, but not to hinder setting down the cause.

When

When publication is past, the depositions copied and delivered out, if either party is minded to examine to the credit of any of the witnesses, the way is (*for the rule of evidence is the same (1) in equity as in law; if the party cannot be good evidence in law, no more can be in equity*) they must file objections, or articles so called, in the examiner's office, which must contain in substance the objections made to the reputation of the witness; as in case of felony, burglary, pillory, perjury or forgery, or any other criminal case, that would disable the party from being a good witness at common law: Or these articles may be founded on the party's leading a lewd life, or being a common drunkard or swearer, or of ill repute and character in his neighbourhood; a common vagabond, a man unknown, of no abode, or such like. Though these latter objections seldom come to any thing; for notwithstanding all this, the man is a legal witness, and the court will hear his evidence, and judge of the *probability* and *improbability*. Accordingly these articles being filed, and a certificate from the examiner that they are so, the court on application by motion or petition, or indeed it may be done without, will permit the party to examine witnesses thereon; and the other party is to support the credit and reputation of his witnesses, and may examine accordingly *tories quoties*, and their depositions must be published, as in other cases; but this case rarely happens, and generally ends in an unnecessary expence.

If both parties examine a witness, neither can afterwards object against reading him; for they have by the examination established his evidence. *Mif. Rep. 382.*

(1) Therefore court expects best evidence nature of issue between the parties admits of. *Vex. Rep. 505.*

On objection to competency, deposition is never read; if to credit only, it may be read, and matter left to consideration of court. 2 *Vez. Rep.* 229.

Matters examined to in the original cause, and publication passed, cannot be examined to in the cross cause. *Moseley*, 382.

Ordered by earl chancellor *Hardwicke*, that in all cases of cross bills filed, after original cause proceeded in, motion to enlarge publication should be special, on notice, in order that court may be able to judge of necessity, from circumstances, and not of course, as is usual, where original cause hath not been proceeded in. 2 *Vez. Rep.* 36. pl. III.

### Setting down causes.

THE plaintiff may of course have the cause set down for hearing before my Lord chancellor, or Master of the Rolls, the Term next ensuing after publication; and by special order the same Term publication passes: And if the plaintiff omits setting down his cause the next Term after publication is past, it may be set down at the request of the defendant the next following Term.

No motion is to be made to hasten a cause to a hearing, nor cause entered with the Register for hearing, without a certificate from the Six clerk that the pleadings are filed.—The Six clerks usually give notice to the sworn clerks, when they intend to set down causes, who thereupon apply to their respect Six clerks, shewing them the depositions published, and leaving with them a short account in writing, of the nature of such causes as they would have set down to be heard, for which the clerk in court charges his client one pound five shillings, if set down at the Rolls, and one pound ten shillings, if set down before the Chancellor; but otherwise, if they

they are set down by the Register, in which case you must obtain the Six clerk's certificate, and therewith apply to the Register, who will set down the cause, and make you a note for grounding *subpoena*'s to hear judgment, which you annex to the *subpoena* note, and on leaving the same at the *subpoena* office, have *subpoena*'s made out.

If a cause is adjourned over for want of parties, though the defendant is served with the order, he must be served with a spa to hear judgment: *Mosley*, 226.

It may not be amiss here to observe, that the day a cause is set down to be heard on, must be sooner or later, according to the priority of publication, with respect to causes presented for hearing; and the causes set down to be heard are entered in the Register's book: And they are to keep in their office a book wherein are entered all causes, pleas, demurrers, exceptions to reports, and the like, that are ordered to be set down for hearing; and in order thereto, all clerks, solicitors and others, are to bring to the Register's office in due time, all orders for setting down of causes, pleas, demurrers, exceptions to reports, and the like, otherwise they will be respectively put off from hearing for that time, and shall not come on again to hearing without farther order.

*Subpoena* to hear judgment must be made returnable, and served at least ten days before day of (1) hearing, if defendant lives in *London*, or within ten miles thereof; but if defendant lives above 20 miles from *London*, this *subpoena* must be served (2) fourteen days exclusive before return thereof, or day to hear judgment.

(1) The very day appointed for hearing must be endorsed on the writ.

(2) In the short vacation, between *Easter* and *Trinity* terms, if the writ be served ten days before return, it is generally held sufficient. See ord. Chanc. 316.

If there be only (3) one defendant in the cause, he may be served personally, which may be done, either by delivering him the body of the *subpoena* under seal, or the (4) label, shewing him the body.

If this writ cannot be served personally, body whereof may be (5) left at the party's house or lodging, with his wife, servant, or some person belonging to his family; keeping the label.

*N. B.* Former writers on this subject seem to have made mistakes, blunders, and confusion, from not knowing, or at least from not considering, that the return day of this *subpæna* is always the day of bearing.

Earl Hardwicke, chancellor, allowed service of *subpoena* to hear judgment, on person who acted as solicitor (6) for one of defendants (7) in cause, though he said he knew not where to find his client, good (8) service. 2 *Vez. Rep.* 23. pl. 7.

If the plaintiff procures the cause to be set down for hearing, but does not serve the defendant with a *subpoena* to hear judgment; if the defendant attends, and the plaintiff does not proceed, or go on in hearing the cause, in that case the cause is struck out of the paper, and no costs is given on either side; but if the plaintiff serves the defendant

(3) If there are more defendants than one, as many as possible must be served with labels, and shewn the body under seal, which must be left with first defendant served.

(4) The person who serves the *subpoena*, in case he is obliged to deliver body as well as labels, on serving it, must make copy of label, previous to service, in order to enable him to make affidavit thereof, which is requisite for obtaining costs to be paid for not appearing.

(5) In which case of leaving body, it is necessary for person who leaves, to take down name of servant or whom else he may happen to serve it on, for purpose of stating same in affidavit of service.

(6) Plaintiff's solicitor had found out defendant's last place of abode.

(7) In this case his clerk in court was not to be found, nor any one attending at office on his behalf, nor at defendant's.

(8) In this matter the Chancellor observed, as orders for service were pretty much discretionary, no harm could arise from allowing such service, but the Earl ordered copy of order to be left with some person at defendant's last place of abode.

with

## Of setting down Causes, &amp;c.

with a *subpoena* to hear judgment, and the defendant makes and files an affidavit of such service, and the cause being in the paper, and the plaintiff's counsel does not open the bill; then upon reading the defendant's affidavit of such service, the court will dismiss the plaintiff's bill with costs to be taxed.

But if the cause be set down at the defendant's request, and the complainant appeareth not, the defendant can take no advantage of it, unless the *subpoena* to hear judgment appears to have been served on the plaintiff; and otherwise the plaintiff is in no default: But if the plaintiff refuses to appear and open his bill, on reading an affidavit of service, the court will dismiss the bill with costs to be taxed.

Commonly, if the party who hath a cause to set down for hearing, is not ready to hear it at the day, but desires it may stand over to a farther day, he must pay the other party the costs of the day, if the court thinks fit to indulge a farther day. Yet when a cause is set down at the defendant's request, if the plaintiff (not being served with process to hear judgment) and his counsel attend, and the defendant with his counsel do not, the plaintiff shall have no costs, as he was not compelled to appear without service of a *subpoena* to hear judgment, and the defendant might chuse whether he would go on to have the cause heard, or not.

It is necessary to have an affidavit of service of the *subpoena* to hear judgment ready at the hearing, so that service may be proved if the defendant should not attend; but this affidavit is sometimes not filed till after hearing; for if the defendants attend it is useless: But if there be the least suspicion of the defendant's counsel not appearing at the hearing, the affidavit of serving the *subpoena* ought to be filed before the hearing; for the court may refuse to give judgment for want of the affidavit being filed.

Between A. B. complainant,  
C. D. defendant.

Affidavit of  
serving a  
subpoena to  
hear judg-  
ment.

In Chancery.

E. F. of. &c. —— makeith oath, That be this  
ponent did on the —— day of —— last past  
ersonally serve the said defendant with a subpoena  
ssing out of and under seal of this honourable court,  
y which said subpoena the said defendant was requir-  
d to appear in this honourable court the —— day  
f —— now last past, to bear judgment the ——  
ay of —— aforesaid, at the suit of the complainant  
bove named, by delivering the body of the said sub-  
poena to the said defendant under seal as aforesaid.

E. F.

Sworn, &c.

### Hearings.

BY order upon consent, the parties may appear,  
answer, and go to hearing gratis; and so they  
may do without order, save only for so much as  
breaks in upon the common course of the court, as  
ime for application, &c. which cannot be altered  
y consent, without a special order for that purpose.

The cause being set down, and standing in the  
paper for hearing, the clerks in court, and soli-  
itors on both sides are to attend the court with the  
leadings, that the same may be read as occasion  
quires, &c. And all office copies are to be sign-  
ed by the respective Six clerks concerned in the  
ause, otherwise they will not be suffered to be  
ead.

The method of hearing causes in court is gene-  
rally thus: The parties on both sides appearing, one  
f the junior counsel for the plaintiff opens the bill,  
nd another for the defendant opens the answer; af-

(1) Register usually, evening before cause day, makes out a paper of causes  
tended to be heard; there are generally twelve causes in one paper, and no  
ore, seldom those, heard same day, and if last cause happens to be called,  
is privileged, that is neither party can be obliged to pay costs of the day  
or not attending the cause, copy of cause paper is stuck up in register's and  
clerk's offices; the first mentioned officer's book may be searched, to see  
ow cause stands,

## Of Hearings.

ter which the plaintiff's senior counsel states the case, and the matters in issue, and briefly touches on the proofs; and then they proceed to read first on the plaintiff's side, and then on the defendant's, the proofs to such material points as are controverted; the counsel on each side debating the matter either of law or equity, that arises thereupon, the plaintiff's counsel always concluding the argument, after which the court pronounces the decree, the minutes (2) of which are taken down and frequently read in court by the register.

If the defendant or his counsel do not appear at the day of hearing, on affidavit being made that he was served with process to hear judgment, the cause is to go on; viz. the bill is opened, and the beginning of the defendant's answer read; and if the matter appears plainly for the plaintiff, the court will make such decree as the plaintiff's counsel prays: But a day in such case is always by the court given to the defendant to shew cause to the contrary against the decree so pronounced, commonly with these or the like words, viz.

*And this decree is to be binding to the defendant, unless he being served with a subpoena to shew cause against the said decree shall at the return thereof shew unto this court good cause to the contrary; but before he is admitted to shew such cause, he is to pay unto the plaintiff his costs of this day's attendance to be taxed by the Master. And the decretal order is to be drawn up accordingly; and before he is admitted to shew cause against it, he shall produce a certificate from the plaintiff's attorney in court, That the costs are paid, or an affidavit of the tender and refusal; after*

(2) Either party may take copy of minutes of decree from register, if it is apprehended he hath made any mistake, or court hath been led into error from wrong information or misapprehension, which will be rectified on application by motion or petition to rectify the minutes,

which

## Of Hearings.

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which he may petition that the cause may be set down again to be heard.

The decree *nisi causa* being drawn up, passed and entered with the Register, the plaintiff sues out a *subpæna* against the defendant to shew cause against the decree, and serves him therewith, as in other *subpæna's*; but this writ being a judicial process, it must and always is made returnable in Term-time; if it should be made returnable out of Term, or at any of the Seals, as was once done, it would be set aside for being irregular: The words of the *subpæna* are to shew cause according to the order of the court, bearing date such a day and year, &c.

There is no prefixed time for the service of this *subpæna*, nor how many days notice the defendant is to have between the service and the day to shew cause; it were to be wished that it might be as in case of *subpæna's* to hear judgment: Though indeed, where the decree is made at any of the days of causes within the Seals after Term, there the party has timely notice to shew cause; but when the decree is pronounced in Term-time, the party, if the *subpæna* is made returnable the same Term, as it may be, has but a very few days left to shew cause against the decree, and is sometimes straitened to do it.

If the defendant submits to the decree unless cause, then upon an affidavit of the service of the *subpæna* to shew cause, and upon a certificate from the Register that no cause is shewn, the plaintiff's counsel move to make the decree absolute on the affidavit and certificate, which is a motion of course.

If upon a hearing the plaintiff doth not appear, the defendant upon making an affidavit of being served with a *subpæna* to hear judgment at the plaintiff's suit (except the cause was set down at his request) the plaintiff's bill shall be dismissed with costs.

## Of Rehearings and Appeals

Where there are cross causes, they shall be brought on to a hearing together, if the answer in the last commenced cause be come in before the first cause is heard: But if there be cross causes on bills exhibited by each of the parties, and both suits be ready for hearing; that party's cause that doth not serve process, shall not come on at the same time with the other, except the other party consents to it. And if several co-incident causes are brought to hearing at the same time, a decree may be against one who is no party to some of the bills.

*2 Chan. Ca. 234.*

It is common to move, that the depositions taken in the second cause may be read on the hearing of the first; and those taken in the first may be read on hearing the second or cross cause.

A necessary defendant being beyond sea, upon affidavit made thereof by plaintiff, and that he knew not whether he was alive or dead, (it was his father) he had an order on motion to proceed against the other defendants without prejudice, and afterwards had a decree without bringing such defendant to hearing. *Vern. 487.*

After a decree in a cause, you may have it referred to a master to see whether it was set down irregularly for hearing. *Mosely, 44.*

A bill was brought by the devisee of lands to perpetuate the testimony of a will, and to establish the will. Bill dismissed with costs. *2 P. Will. Rep. 162.* [For more relating to this head, see *2 Eq. Cas. Abr. 490*]

### *Rehearings and Appeals to Lord Chancellor, &c.*

**I**F either party apprehends himself aggrieved by a decree, he may petition the *Chancellor* for a re-hearing, in case the cause was heard before his Lordship;

ship; but if it was heard before the *Master of the Rolls*, then application may be either made to his Honour, by petition, for a rehearing before him, or to the *Chancellor*, by petition of appeal; but it is usually to the *Chancellor*. And if the decree be made by one of the judges, deputed by the *Chancellor* to sit in his absence, then the party apprehending himself aggrieved, may also apply to the *Chancellor* by petition of appeal for a rehearing before his Lordship. And the petition is to be signed by two counsel, one whereof is to be of good note in court, or must have been counsel in the cause, shewing and stating the matter for a rehearing, and the reasons why the party apprehends himself aggrieved by the said decree, and signifying, that they conceive there is good cause for the same; upon which the court will, at any time before the decree is signed and enrolled, order the cause to be reheard: But the petitioner must deposit ten pounds with the Register, nine pounds ten shillings whereof is generally returned him, if he prevails in the rehearing, though the court sometimes orders it to be divided; and as to the remaining ten shillings it is the Register's poundage, he having twelve pence in the pound for all money deposited with him, on his repaying it. On a rehearing being ordered, the cause is commonly set down for a certain day on which it is to be reheard; and two days at least before such day, the petitioner is to leave for the *Chancellor* (or *Master of the Rolls*, if the application was to his Honour) a true copy of the decretal order appealed from, and also of the petition for rehearing; for which you pay five shillings on leaving the same.

Held clearly by *Lord Chancellor* that upon an appeal, either from the Rolls to his Lordship, or from him to the House of Lords, no new matter not in issue should be insisted on, *Trin. 1710. Prec. in Chan. 295*, — but afterwards in *Trin. 1718.*

## Of Rehearings and Appeals

The *Lord Chancellor* held, that on an appeal from the Rolls to his Lordship, the cause is open, and the party is at liberty to read new proofs, and offer what he can against the decree. *Ibid.* 496. —

*Gilb. Eq. Rep. S. C.* and p. — The rule is, that on an appeal the whole case is open. *Trin. 1725. Sel. Ca. in Chan. 24.* — *Vid. Ibid. 48.*

An appeal from decrees made in the plantations lies only to the King in council. *2 P. Will. 261.*

It is in the discretion of the court whether or no they will grant a rehearing. — And it is equally so, whether they will do any thing thereon. *3 P. Will. Rep. 8.*

If a matter of fact be mistaken at the hearing, &c. it is to be set right by rehearing, and not otherwise. *1 Chan. Ca.* But if it be a small mistake, it is sometimes rectified by petition to the *Lord Chancellor*, or *Master of the Rolls*, who heard the cause; praying that all parties, with the Register, may attend with the minutes, and that his Lordship, or Honour, would rectify the same: On which an attendance is ordered; and the court make an order for rectifying the said minutes, if they see cause.

But the granting a rehearing shall not stop or hinder proceedings on an order or decree appealed from, without the special order of the court for the same. *Ord. Chan. 208.*

In the case of *Howard v. Colley*, it was ruled, that on an appeal the whole case is open; but on a rehearing only so much as is petitioned against; and if all do not petition, it is only open to the petitioners. *Trin. 11 Geo. I.*

No proof to be read upon a rehearing that was not read upon the hearing. *Vill v. Lane 1726.*

Matters of account admitted before the Master shall never be allowed upon an appeal. *Chastam v. Leigh 1705, and Mayor, &c. of Hertford v. The Poor of the said town 1713.*

No appeal lies for costs only. *Carr v. Parrall*

1727.

You may appeal to the Lord Chancellor or to the House of Lords for costs only, tho' the old practice was otherwise. *Mos. 395. pl. 203.*

When a caveat is entered to prevent the inrollment of a decree, there ought to be a rehearing before an appeal.

None but parties are intitled to an appeal. *Vill v. Lane 1726.*

The court will not rehear a cause after a decree signed and inrolled, notwithstanding the cause had been open since the inrollment. *2 Chan. Rep.*

An agreement was signed by the parties, and by consent made an order of court, to submit to such decree as the court should make, and neither party to bring an appeal; yet the cause was allowed to be reheard. *3 P. Will. Rep. 242. Buck v. Fawcett.*

Sir Geo. Downing brought an appeal in Parliament, from a decree in Chancery by consent, suggesting, that though the Register in drawing up the order, had drawn it as a decree by consent, and the minutes were so too; yet he never did consent to such decree, nor his counsel neither; or if they did, it was without his authority, and made affidavit of it; but the appeal was dismissed. *Hill. 1699, between Downing and Cage.*

The Parliament being prorogued, you may proceed in the account in Chancery, notwithstanding the appeal. *Vern. 344.*

No appeal to the House of Lords from a sentence by the delegates, or from a decree upon the statute of charitable uses. *2 Vern. 119.*

New trial granted by the House of Lords. *2 Vern. 378.*

If a decree be inrolled so that the cause cannot be reheard, there is no remedy but by bill of review, which must be on error appearing on the face of

## Of Rehearings and Appeals

the decree, or matters subsequent to the decree, as a release, or a receipt discovered since. 3 P. Will.

371.

In the case of *Arthur Onslow*, Speaker of the House of Commons, King, Chancellor, on the circumstances of the case and the decree not being inrolled, refused to discharge an order for rehearing at the distance of 24 years. 2 P. Will. Rep. 8.

If after hearing a witness is convicted of perjury, advantage may be taken of it on a rehearing. 2 Vern. 463.

On a new bill to carry a decree into execution, the court may vary what it thinks proper. *Vide Sel. Ca. in Chan.* 13, 14.

[For more concerning rehearing and appeals, see 2 Eq. Cas. Abr. 81, 419. (B.)]

### *A petition of appeal to the Chancellor.*

Between *A. B. esq; and C. D. gent.* } plaintiffs,  
executors of *C. B. esq;* }

*T. R. esq;* - - - - defendant.

To the right honourable ————— Lord High  
Chancellor of Great Britain.

The humble petition and appeal of the defendant T. R.

*Sheweth,*

**T**HAT your petitioner was in the year —, and for several years afterwards, employed by the plaintiff's testator *C. B.* as his solicitor in law and equity, and also as his agent in divers other affairs, and particularly in getting the testator a customer or Chapman for his place as —, and in a suit which the testator prosecuted against one — for

for the recovery of a debt of about 1500*l.* and which was looked upon as difficult to be recovered.

That your petitioner behaved himself in all the said affairs honestly, diligently, and with good success, and to the great satisfaction of the testator.

That your petitioner about the — of April — delivered to the testator bills of particulars of his costs and charges, in which bills such businels as your petitioner had done as his agent, as well as the law charges, were inserted and included, and in which bills your petitioner had brought to account all the sums of money which he had ever received from or on account of the testator; upon the delivery of which said bills, the testator promised that your petitioner's bills should be paid when the debt due from the said —— was recovered.

That the said —— debt was recovered, in which recovery your petitioner had been very useful to the testator; but your petitioner's debt was not paid, and then the testator was pleased to propose to your petitioner, that your petitioner's bills should be first perused and examined by Mr. —— and Mr. —— being persons skilful in such affairs, and that then your petitioner's debt should be paid: To which proposal your petitioner readily submitted and complied; and they did accordingly peruse and examine the same, and found that your petitioner had brought to account all the monies that he had received, but made several objections to several items in your petitioner's bill, which they reported to the testator, and informed and laid before him such their objections, and their reasons for making those objections, leaving it to the testator's discretion, whether he would allow or disallow of the same.

That the testator, after he had considered of the said objections, and the reasons of them, declared that he would not make any abatement of the said

## Of Rehearings and Appeals

bills on account of the said objections, or to that effect.

That the testator, after he had sufficient time to peruse and consider of the said bills, and had caused them to be examined into and shewn to such persons as he thought fit, was pleased to come from his house at \_\_\_\_\_ to your petitioner's chambers on or about the \_\_\_\_\_ day of \_\_\_\_\_, when and where he signed and allowed of your petitioner's account, in the words and figures following, *I do hereby allow and approve of this account, and I do acknowledge that I am indebted to Mr. T. R. upon the balance of account, the sum of \_\_\_\_\_ as above. Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_.* Witness \_\_\_\_\_.

That your petitioner apprehended that the said account was then closed, and your petitioner's property in the said debt fixed and ascertained.

And your petitioner sheweth, that the only business your petitioner was afterwards employed in by the testator, was to oppose the prosecution upon a commission of lunacy sued out against him, upon which account there became due to your petitioner upon the balance, the further sum of \_\_\_\_\_ for his fees and disbursements; but before your petitioner received any satisfaction for his said several debts, the testator died on or about the \_\_\_\_\_ day of \_\_\_\_\_.

That upon the death of the testator, the plaintiffs were so far from making any objections or dispute to your petitioner's said two debts, that they, by Mr. \_\_\_\_\_ their solicitor, made your petitioner several promises that your petitioner's debt should be paid and satisfied; but notwithstanding the said promises, and before your petitioner had begun or commenced any action at law, the plaintiffs in or about \_\_\_\_\_ term \_\_\_\_\_ exhibited their bill in this honourable court against your petitioner, to set aside

aside the said stated account, and to have your petitioner's bill taxed, and to have a general account of all monies received and paid, and to have an injunction to stay your petitioner's proceedings at law; but the plaintiffs did not by their bill charge any particular fraud or ill practice on your petitioner in or about the obtaining the said stated account, nor shewed any reason why the same should be set aside, save only that they suggested by their said bill, in general terms, that your petitioner's bills of costs and charges were unfair and unreasonable, and that the testator was prevailed on to allow the said bill, and to sign the said account by fraud and imposition, and when the testator was not capable of judging rightly what he did, and within the time when the testator, by virtue of an inquisition found and returned upon a commission of lunacy, had been adjudged to be a person of such unsound mind, memory and understanding, as to be incapable of managing himself or his estate.

To which bill your petitioner put in his answer, and thereby denied all manner of fraud and ill practice in obtaining the said stated account, and insisted the same ought to stand, and not to be ravelled into; and as to the said inquisition found on the said commission of lunacy, your petitioner insisted that he was not bound thereby, being no party thereto, and that the same ought not to be allowed as evidence to conclude him; and that your petitioner had brought his action at law to recover his said debt, where the matter of fact whether the testator was *compos mentis*, or not, was properly triable by a jury, and where the complainants might make their proper defence.

That issue being joined, witnesses examined, and publication passed, the said cause was heard before his Honour the Master of the Rolls on the \_\_\_\_\_ day of \_\_\_\_\_, when his Honour was pleased to

order

## Of Dismissions, &amp;c.

order and decree, that the said stated account should be set aside, and referred it to a Master to tax your petitioner's bills of fees and disbursements included in that stated account, as also his bill of fees and disbursements delivered since the said stated account.

By which decree your petitioner conceives himself aggrieved, so far as concerns the setting aside the said stated account, and the new taxing your petitioner's bills included therein.

Your petitioner therefore humbly appeals to your Lordship from that part of the said decree, and humbly prays your Lordship to rehear the said cause, and to appoint some short day for that purpose.

*And your petitioner shall ever pray, &c.*

*We bumbly conceive that this cause is proper to be heard before your Lordship, if your Lordship shall think fit.*

A. B.  
C. D.

## C H A P. IV.

Of dismissions and decrees; and of drawing up, inrolling, executing, exemplifying, and reviving decrees.—And first of dismissions.

**A** Dismission is the sentence of the court, whereby the plaintiff's bill is ordered to stand dismissed, and is adjudged unfit for the court to take cognizance of: Also it may be in many cases where the court hath cognizance of the cause, yet finds no equity

## Of Dismissals, &c.

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equity proper for the plaintiff's relief, and therefore dismisses the plaintiff's bill.

And dismissals are usually prayed and procured upon motion, and had upon the defendant's answer and disclaimer, and sometimes on a plea or demur-  
rer, or on the merits at the hearing; and not after examination of witnesses before the hearing; though upon a discontinuance of prosecution, by special motion and order of court a dismission may be had.

Before appearance the plaintiff may obtain leave to dismiss his own bill; so after appearance, and before answer, or after answer and before the parties have examined witnesses, the plaintiff may generally of course, on motion, have leave to dismiss his own bill with costs. And if the plaintiff dismiss his own bill, or the defendant dismiss it for want of prosecution, the plaintiff must, by the late statute for *Amendment of the law*, pay full costs to be taxed by a Master. 4 & 5 Ann. c. 16.

A cause may be dismissed for vexation by reason of a double proceeding, as if the plaintiff first brings an action at law, and then his bill in this court for the same thing, &c. though he may proceed here, his proceedings at law being stayed by *injunction*; and if the plaintiff forbear prosecuting his suit here, or does any thing which seems to make himself a judge of the matter in question, these are causes of dismission.

As concerning elections to be made, where a man brings his action at law and his bill in equity for the same matter, defendant must first answer the bill, and then put the plaintiff to his election in which court he will proceed; and this is a motion of course, he has by the order served on the clerk eight days, to shew cause against making his election. If he elects to proceed at law, his bill in equity stands dismissed with costs.

If he chuses equity, then an injunction issues to stay his proceedings at law: This election is filed  
in

## Of Dismissions, &amp;c.

in the report office, and signed by plaintiff's clerk in court, and is the authority for making out the injunction.

But still this election does not hold in all cases; for if the suit in equity is not for the same matter, there shall be no election. If the bill is a bill of discovery, and no relief sought thereon, there is no election; for perhaps from that discovery he may be able to proceed in law, and without it cannot.

Upon this head there seems to be a plain failure of justice, (which hitherto has never, as we know of, been taken notice of) as for example: Suppose the plaintiff elects to proceed in equity, and his bill upon hearing is dismissed, either with or without costs, all the benefit the defendant who is doubly vexed by it has, is only to have his costs, and plead it in bar to any new bill brought against him for the same matter; (for a dismissal upon an interlocutory order is not pleadable) but his injunction for staying proceedings at law is gone by the dismissal; and the plaintiff is in that case at liberty to proceed at law, which the court never intended, when they put him to his election. Now he elects to take his fate in equity, finds that court against him; and when he has done there, he may take another turn at law, which is a great hardship; and it were to be wished, that the wisdom and justice of the court would remedy it; for the order of election is, that the plaintiff is prosecuting at law and in equity for one and the same matter; and therefore he is called on by the justice of the court to elect in which court he will proceed; but still he is not to proceed in both courts.

Plaintiff is not bound to make his election till defendant hath answered. *1 Vern. 103.*

Where a plea is put in to a bill, though there is an answer, the bill cannot be dismissed for want

of prosecution, till the plea hath been argued.  
*Barnard. Rep. in Chan. 280.*

A cause being ended by agreement or arbitration, without proceeding on the bill, order will be given to dismiss the bill.

A dismission may be upon the plaintiff's own prayer; and is often upon hearing the cause, where it appears that the merits thereof are improper for a court of equity.

And dismission upon hearing is sometimes for want of parties, sometimes because the matter belongs to another court to determine; as to the courts of law, or ecclesiastical courts, or that the cognizance thereof belongs to another court of equity; as the universities, and cinque ports, &c. or for that the matter in demand is below the dignity of this court, either in respect of its value, as under ten pounds, or in respect of its nature, being in itself dishonest, or accompanied with fraud, corruption, or oppression, or having an evil tendency, or for want of equity, &c.

As to dismissing bills for want of parties, the distinction seems to be this: Where the parties omitted are really interested, and such as have a right by their answer to controvert the plaintiff's title, and draw the cause to a fresh examination, here the bill ought to be dismissed with costs; but where the parties omitted must be added merely for form, there the cause may be adjourned on payment of costs of the day, and the bill amended, and proper parties added.

If a dismission be decreed upon a full hearing, and drawn up, signed and enrolled, it may not be altered by any motion or order afterwards made for retaining the cause, but only by a bill of review; or shall a new bill be admitted but upon affidavit of new matter, (as in the case of a bill of review) and a special order of court made thereon.

Probable

## Of Dismissions, &c.

Probable cause of suit may induce the court to spare costs, when the plaintiff is dismissed on the hearing; though if on such dismission there appears no such probable cause, &c. the plaintiff commonly pays full costs to be taxed.

Upon a dismission with full costs, the costs are to be taxed by the Master to whom the taxation is referred, and his report is to be had therein; and then without confirmations of the report, the same being filed with the Register, you may have a *subpoena* for your costs, upon which, if they are not paid, process of contempt shall issue, as in other cases: And where a bill is regularly dismissed of course, or by order, for want of prosecution, &c. the same cannot be retained without special order of the court, which is seldom ordered without some extraordinary reason be given, and in that case the court orders the plaintiff to pay such costs to the defendant as they think proper.

You cannot apply to the court to dismiss a bill for want of prosecution till after the end of three terms, exclusive of the term wherein there was any proceeding; as putting in the answer, serving a *subpoena* to rejoin, filing a replication, and the like; and with regard to dismissing bills for want of prosecution, see before Vol. 1. under the title *Replications and rejoinders*.

In case of a dismission, which was not upon hearing of the cause; if any new bill be irregularly brought, the dismission is to be pleaded: And after reference and report of the contents of both suits, and consideration of the cause of the former dismission, the court will order the retaining or dismission of the new bill, according to the justice and the nature of the case. And observe, that touching the causes of dismission and retainer, this court exercises a discretionary power therein. *Vide Ord. Chan.* 144. *Cary's Rep.* 76, 110, &c.

The

The plaintiff filed a bill in the *Exchequer*, which was dismissed, and now brought the same bill in this court, which the defendant moved might be dismissed with costs; but the Lord Chancellor, on consulting the Register, said, it could not be dismissed on a motion, but the defendant must plead to it; and then it is referred to a master, to see whether it is the same bill, or not; but if a bill is depending here, and a second brought for the same matters, the defendant may move, that it may be referred to a master to see whether they are the same, and to dismiss one. *Moseley*, 268. pl. 154. *Anon.*

In case there be several defendants who defend the suit severally, by different clerks in court, costs of dismissal must be paid to as many defendants as have employed their several clerks in court.

When, by order of this court, proceedings are had at law, as to try the issue, or the like, the party shall have his costs at law allowed, as well as his costs in this court. But upon a dismissal of a bill here, whilst the defendant prosecuted at law upon a bond, this court refused to give him his costs at law, because he should recover them there.

Bill dismissed, principally because the plaintiff did not come into this court till after verdict and judgment. 2 *Cban. Ca.* 95. *Lee against Boles.*

Where a bill is dismissed, no motion will be heard to retain it till costs of the dismissal be paid and certified by the attorney on the other side.

If the plaintiff delays his cause, and defendant moves to dismiss the bill, the court will not always grant this, according to the circumstances of the case; but sometimes will only order the plaintiff to speed his cause.

Suits grounded on nuncupative wills, long leases ending to perpetuities, estates purchased, broughes for marriages, agreements for play or wagers, bargains for offices contrary to the statute of *Edw. 6.* or

6. or for simony, or usury, are dismissed on motion, if they take up the whole matter of the bill, and no special cause to induce the court to allow procedure.

If plaintiff disavows, the bill is dismissed. *Chas. Ca. 348.*

Dismission upon an election to proceed here or at law, is not peremptory, but plaintiff after failure at law, may bring a new bill. *2 Vern. 32.*

When a cause is brought to hearing, after issue joined and witnesses examined, the court sometimes makes a decree for the plaintiff, as to some points contained in his bill, but dismisses his bill as to other points, and sometimes orders the plaintiff to pay costs to the defendant, for so much of the bill as is dismissed, to be taxed by the Master; and sometimes orders the defendant to pay the plaintiff costs to be taxed, for so much of the bill as is decreed for him, as the court shall adjudge proper.

Where a plea and answer are put in to a bill, no dismissal can be for want of prosecution till the plea is argued. *Barn. Rep. in Chan. 280.*

And sometimes, upon a full hearing, the court will, upon pronouncing a decree for the plaintiff, order the defendant to pay him his costs to that time. And if the court refers matters to a Master, as accounts to be taken, or the like, between plaintiff and defendant, the court commonly reserves costs in those cases till after the Master hath made his report: And after the Master hath made his report, the court gives either party liberty to apply for farther directions, as they shall think fit, whereon such order shall be made as shall be just: In which case, after the Master hath made his report, and the same is absolutely confirmed by the court, either party may apply by petition to the *Lord Chancellor* to have the cause heard on the Master's

er's report, as to costs, which is always granted of course, and that order being drawn up and served on the adverse clerk in court, and the cause being set down by the Register to be heard upon the Master's report, the court will order costs to be taxed by the said Master, and paid by such party as the court shall think proper.

Bill of revivor brought by a wrong description of plaintiff; a second bill brought, and demurrer thereto.—The master on reference reports they are for the same cause, but in different rights; the former to be dismissed with costs generally, not with nos. costs. *Barnard. Chan. Rep.* 83, 4.

### Of (a) decrees.

(a) See  
Master of  
the Rolls  
in Vol. I.

A Decree is the final order of this court determining the right of the matters in question, upon a full hearing; agreeable to equity; and ordering the parties accordingly.

And it is pronounced in open court by the Lord Chancellor, Keeper, first commissioner, or Master of the Rolls; and it is minuted down by the register when sitting in court, who afterwards usually reads the same to the court, and if any mistake do thereupon appear, the same is forthwith rectified.

A decree may be altered upon a proper application in the term it is pronounced, without a re-hearing. *Vaugban against Blake*, 3d of May 11 Geo. I.

*Vin. Abr.* 400. pl. 25.

Afterwards the register being applied to, and a brief of the pleadings being left with him at the office; he thereupon draws up the decree in form, according to the pleadings and minutes in the cause, and commonly issues a note to the adverse party, that he may take a copy, if he thinks fit, and attend him before the same is passed. But usually the solicitor or clerk in court for the defendant, soon

## Of Decrees, &amp;c.

after the decree is pronounced, and before the same is drawn up by the register, marks the register's book for a copy of the order, and as soon as the register has drawn up the order, and the other side hath perused and returned it to the register, he makes a copy thereof for the defendant, and the defendant having returned his copy, the register will grant

(a) You cannot move on a decretal order till it party.  
(1) note of the time when he will pass (a) the same, a copy whereof is usually served on the adverse party.

is passed with the Register. Moseley, 71.

And if the register do alter or not pursue the minutes, then, and then only, the court may be applied to, to have the order settled according to the minutes.

The decree being passed, is to be left with the entering register to be entered within — months, or else you will be obliged to obtain an order that the same may be entered *nunc pro tunc*; after which it may be signed and inrolled: And until it be signed and inrolled, it has only the force of an interlocutory order; and is not final, but may be altered upon a re-hearing, or sometimes upon motion or petition.

It is a rule, that when a decree is entered by consent, the merits after shall never be inquired into, unless there be an objection that the word *consent* be struck out of the order. See 2 Eq. Cas. Abr. 279.

If after pronouncing a decree, a caveat be entered by either side, to stay the signing and inrolling of it, the caveat stays the signing and inrolling for twenty-eight days after presenting the decree to the Chancellor to be signed and inrolled; and notice give

(1) This step is taken in order that if either party hath any objection to make to decree, same may be made, before it is passed.

by his lordship's secretary to the adverse clerk in court. *P. Will. Rep.* 609. *Ves. Rep.* 326. and *pl.* 160.

The reason of this resolution is, because encouraging signing and inrolling (1) decrees tends to create great (2) expence to parties, in case there happens to be only a small mistake therein, especially in decrees for account, which inconveniences of quick signing decrees, court observing, caused parties having liberty of entering *Caveats*, without assigning any reason for it. *Ves. Rep.* 526. *pl.* 160.

And no decree, or dismission, shall be presented to the *Lord Chancellor*, or *Master of the Rolls* to be signed, until the same be signed by the six clerk in the cause, or his deputy.

And if any decree, dismission or injunction be made or granted by any of the *Judges* sitting in *Chancery*, it must be signed by them, or such of them, as shall make the same, and after by the *Chancellor*, &c. before it be effectual. *Vide Ord. Chan.* 48, 56.

Observe that every decree, &c. must, before inrollment, be signed as aforesaid.

And decrees, and dismissions made at the *Rolls*, or at *Westminster*, on such days as the *Chancellor*, &c. is not present, being drawn up, are first to be signed by the *Master of the Rolls*, or the *Judge*, that sat at the hearing of the cause, and then presented to the *Lord Chancellor* to be by him likewise signed; which done they may be inrolled.

By the ancient practice of the court, there was no time limited for signing and inrolling a decree: But now the decree is to be signed within six months after the last order made; if afterwards, it is petitioned for.

(1) Decree not signed and inrolled, cannot be pleaded. *a Ves. Rep.* 577.

(2) Occasioning either appeal to lords, or bill of review. *Ves. Rep.* 326. *pl.* 160.

*Note;* An order may be obtained either upon a motion, or petition, to sign and inroll a decree *nunc pro tunc*; but it is usually done upon petition.

It is conceived such an order should be passed, and entered with the register, the proper repository for all these orders; and tho' it is never done, yet a case may fall out, where it may be of fatal consequence to the party; for suppose that one of the errors assigned by the bill of review should be, that by the ancient rules and practice of the court, the decree is to be inrolled by such a time, and yet upon the face of the inrollment it appears to be inrolled afterwards without any leave or order of the court for its being so; (for the day of signing the decree always appears on the face of it) and if it falls out that there is no order entered with the register to inroll the decree *nunc pro tunc*, how will such an error or mistake be got over, or ever cured? Therefore it were to be wished, that all these orders to sign decrees *nunc pro tunc*, were entered with the register, to obviate a fatal error which one time or other may fall out.

Much less can an order signed by the Master of the Rolls, to sign and inroll a decree, when the time was elapsed, *nunc pro tunc*, be thought a sufficient reason for the Lord Chancellor to do it; because it is his hand alone that gives sanction to it: The decree, when inrolled, is a decree of the court, though it is made at the Rolls, it is nothing; and the conclusion is, it is therefore this day (that is to say) such a day and year, adjudged and decreed by the Right Honourable, &c. and by the power and authority of the high and honourable court of Chancery ordered, adjudged and decreed so and so.

And how is it possible for an inferior officer, as the Master of the Roll is, to direct the superior officer to sign and inroll the decree? or how the great seal can justify the doing of this by any authority but

but their own, where it is solely lodged, deserves consideration.

No original bill can vacate a decree *signed* and *inrolled*. *Gilb. 185.*

A decree being pronounced, and defendant dying soon after, the court may be moved to have it inrolled nevertheless, for it may be compared to a judgment at law, which if given before, may be entered up after the party's death; and the court has ordered decrees in this manner to be inrolled.

*2 Chan. Ca. 227. Nelson's Rep. in Chan. 169. S. P.*

*3 Chan. Rep. 73. S. P.*

When the party is committed, or brought in by a *serjeant at arms*, for breach of a decree, he is not to be enlarged until he hath performed the decree in all things that are to be presently done, and also given security by recognizance with sureties, as the court shall order, to perform the other part of the decree (if any be to be performed) at future days and times appointed by the decree.

The decree from the time of pronouncing is binding, and an act of the court; all the rest is a sort of ministerial or clerical act.

Decrees of this court are equal judgments at law, and their execution as effectual, or more so.— And real priority, and not relation to the first day of a term must give preference of payment.— An executrix in her answer confessing just debts demanded by the bill, can't be said to give preference *per fraudem*, as she only exercises the power lodged in her, and which the courts of law permit her to use.— This court will therefore injoin against judgments subsequent to its decrees, *Morris v. The Bank of England, Cases in Eq. temp. Talbot 217, &c. 3 P. Will. 402. Sel. Cas. in Chan. 43.*

A decree against an executor was preferred to a judgment at common law against him, upon its being prior in time. *Prec. in Chan. 79.*

An original bill, brought to set aside a decree for *Alimony*, confirmed upon appeal in the House of Lords, the husband offering to be reconciled; bill retained, but the decree not to be compleatly vacated, and the wife at liberty to resort to it if used ill by the husband. *Finch 153.*

If a sum be liquidated at the filing of the bill, or before, the court will decree interest, where the plaintiff is necessitated to come here. *MSS. Ca. 15  
Chancery. Anon. Pasc. 8 Anne.*

Decrees or dismissions being signed and inrolled, cannot afterwards be varied or altered by the court, (except by bill of review) but you must in that case appeal to the House of Lords for relief, so as to vary such decree or dismissal.

If the decree is for a foreclosure, or for payment of a legacy and interest, or for an account of a trust; or for any other matter where an intricate account is thereby directed to be taken, and by the pleadings and proofs already taken in the cause; you cannot make out a regular charge on the defendant, without farther inquiry; then exhibit interrogatories before the Master for examining the defendant, or any of the parties directed by the decree to be examined, and get their examinations returned as soon as possible, and then make out your charge,

And if there are a great many parties, so that you cannot conveniently serve them in the country, then you may, on affidavit and motion, obtain an order that service of the order *nisi* on the clerk in court may be good service.

If the decree is personal, as for payment of the money reported due on taking the account, then make out a *writ of execution* of the decree and Master's report signed and inrolled, and serve it on the party. And in case of non-performance, then issue process of contempt.

But if the decree is for a foreclosure, or for any other purpose where it is necessary to sign and inroll the decree, then after the report is confirmed, and the money not paid, you get the decree signed and inrolled; and after that a writ of execution thereof, if it be necessary, and serve the party with a copy thereof, which if he refuses to perform, you make out the usual process against him as in other cases.

When a decree of foreclosure is made, the time for redeeming must be computed according to calendar months, and not according to lunary ones. *Barnard. Rep. 324.*

After a decree against a corporation for a sum of money, and a *distringas* issued against them, the court refused to give them any time, or to let them be examined on interrogatories; otherwise if a *distringas* on mean process. *2 Vern. 395.*

Private members made liable where corporation had no goods. *Ibid. 396.*

On a bill brought to have the benefit of a former decree, plaintiff cannot examine witnesses formerly examined, or new witnesses, but the court may examine into the justice of the former decree upon the proofs already made in the cause. *Ibid. 409.*

Subsequent incumbrances may redeem the first mortgagee tho' the decree had foreclosed the mortgagor, and an account taken under the decree.— Defendant pleaded the decree signed and inrolled, and the taking the account in an adversary way, and denied that he had any notice of plaintiff's incumbrances: But plea over-ruled. *2 Vern. 663.*

On mortgages and securities carrying interest, the Master is to compute interest to the time the money is appointed to be paid by his report, after which it will carry interest for the whole sum mentioned in his report, including principal, interest and costs.

And it is the practice of this court, upon an account decreed, that from the time the Master shall make his report, the whole sum therein shall carry interest. And Sir John Trevor, Master of the Rolls, said, If an account is stated by the parties, it shall carry interest from the time of stating.  
*MSS. Ca. in Chan. Trin. 7 Ann.*

All parties to the suit or decree shall be bound by the decree, if they are of full age, *compos mentis*, &c. And where any come in *pendente lite*, and while the suit is in prosecution, regularly the decree bindeth them. *1 Chan. Ca. 150.*

After a decree is pronounced, matters of account to perfect it may be examined by a Master, &c. But nothing may come under examination against the foundation of the decree.

If a decree be to account, and the parties die, if the executors or administrators do not revive within six years, this is not within the statute of limitations. *1 P. Will. Rep. 742.*

If an administrator obtains a decree, that he, his executors, or administrators may redeem a mortgage, and he dies intestate before iprollment of the decree, it shall not afterwards be enrolled for the benefit of his administrator, for the first administrator's title is gone. *2 Chan. Ca. 248.*

A decree does not bind the legal interest of the estate, but the person only, who may be ordered to convey and assure the interest; but it so far affects the title to lands and goods, that by sequestration and injunction the court does dispose of the possession to the party to whom of right it belongs.

Where a decree concerns lands even of leases for years, it must be entered with the register within six months, or else shall not prejudice purchasers.

And he that purchases after a bill exhibited against the vendor, does it at his peril. *2 Chan. Ca. 223.*

## Of Decrees, &c.

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Decree for husband and wife in right of the wife; if the husband dies, his widow, not the executors, shall have the benefit of the decree. *1 Chan. Ca. 27.*

If there be an order, that one shall stand committed to the Fleet for breach of a decree; yet the warden cannot take, and imprison him, but a writ ought to be awarded for taking him. *Danv. 176.*

Where the plaintiff had a decree nisi, and did not appear, *His Honour* looked upon it as giving up of the judgment, and dismissed the bill with costs, *Sel. Ca. in Chan. 6. 50.*

Decrees of this court take effect from the time they are pronounced, and the death of the parties shall not hinder the enrollment in a convenient time. *Finch 169.*

Lands settled on trustees for raising portions for daughters, on a bill for a sale, the court decreed the heir to join in the sale, tho' he has no legal interest, *2 Vern. 99.*

In the drawing a decree, it is not sufficient for the register to recite the bill and answer, and then add, that upon reading the proofs, and hearing what was alledged on either side, it was decreed so and so; but the facts which were proved, and allowed by the court as proved, must be particularly mentioned in the decree; otherwise if a bill of review be brought, those facts shall be taken as not proved; for else a decree could not be reversed by a bill of review. *1 Vern. 214. 2 Chan. Ca. 161. S. P.*

Decree will sometimes bind persons not parties or privies, as four named to defend for a parish, the decree will conclude the inhabitants; so in cases of inclosures of common, suits to settle the customs of a manor, &c. a decree will bind some tenants who are not parties, and others who oppose it; otherwise suits would be endless; if, where there are such numbers, all must be parties, there would be perpetual abatements, and no right could be done.

*1 Chan;*

*1 Chan. Ca. 48, 272. 2 Vern. 103, 184; Eq. Cas. Abr. 163.*

If there are two executors, and one of them by decree is prohibited to receive any more money, or meddle further with the testator's effects, and a mortgagee to the testator, who was present at the hearing and pronouncing of the decree against him, he must pay it over again. *1 Vern. 57, 122.*

Though it be a rule not to found a decree upon a single evidence against a defendant's answer, yet it has been overruled, where a fraud was plain and considerable. *Ayl. 69.*

Decree to account to the first administrator, the second may carry it on. *Vern. 25.*

Equity will not decree an award, unless it be of all matters referred. *1 Chan. Ca. 186.*

A decree, whether inrolled or not inrolled, is pleadable. *1 Vern. 310.*

Matters assigned for error in a decree must appear in the decree itself; for being inrolled, it is such a record as must be tried by itself. *1 Chan. Ca. 54.*

If a feme sole exhibits her bill, and during the proceedings marries, and no notice is taken of it, but the cause proceeds, and there is a decree for the defendant; this will not be a sufficient cause to reverse the decree, because no error appears in the decree, only a matter which should have been pleaded in abatement, and of which the defendant alone might have taken advantage. *1 Chan. Ca. 231.*

The Lord Chancellor for the time being will enforce the execution of decrees, though made by a prior Lord Chancellor; and though they are alledged to be unreasonable, yet will assist with the utmost process of the court till they come regularly before him to be reversed. *2 Chan. Rep. 127.*

These are made by the clerk in court in the cause, and ingrossed on parchment, stamped with double five shillings, each skin to contain ten sheets.

[For

## Directions for drawing Decrees.

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[For more concerning decrees, See 2 Eq. Cas. br. 279. &c.]

### The form observed in drawing a decree.

Lord Chancellor. Friday the 9th day of March 1767. and in the 7th year of the reign of his Majesty King George the third. Between A. B. plaintiff, C. D. defendant.

THIS cause coming yesterday, as also on this present day, to be heard and debated before the Right Honourable the Lord High Chancellor of Great Britain, in the presence of counsel learned on both sides, the substance of the plaintiff's bill appeared to be [Here recite the bill briefly.] Therefore that the said defendant may account, &c. [The prayer of the bill.] and to be relieved is the scope of the plaintiff's bill: Whereto the counsel for the defendant alledged, That he by his answer admits, &c., [Here set forth the substance of the answer.] + Whereupon, + Here follow the words of the order, beginning at Whereupon; for where the depositions are read at the hearing, it is always said upon reading the proofs, and

and upon debate of the matter, and hearing the will of the said E. F. the answer of the defendant, a paper-writing or account of the testator's handwriting relating to his estate, marked N° (1.) and the proofs taken in this cause read, and what was alledged by the counsel on both sides, his Lordship declared, That, &c.' [Here set forth the decree of the court.]

all such exhibits or deeds, if any read at the hearing,

But observe, that if a cause be heard upon bill and answer only, and the decree be thereupon made; then

## Directions for drawing Decrees.

then you say after the words coming on to be heard  
 and debated before, &c. you say, ' upon the bill  
 and answer in the presence of, &c. Whereupon,  
 and upon debate of the matter, &c. [as in the or-  
 der,] this court doth think fit, and so order and do  
 cree; and accordingly it is ordered, adjudged and  
 decreed, that, &c.' [Here insert the *decretal part*  
 of the order on bearing.]

And if it be a rebearing, upon the order on hear-  
 ing, then after reciting the order on hearing, say  
 thus; — with which said order the said defen-  
 dant being dissatisfied, he petitioned his Lordship  
 for a rehearing of the said cause, and to have the  
 order rectified in several particulars; and thereup-  
 on, by an order bearing date, &c. it was ordered,  
 that the said cause should be reheard the, &c. of,  
 &c. upon the defendant's depositing ten pounds  
 with the register, [as you find by the words of such  
 order.] And the said defendant having deposited  
 the said ten pounds accordingly, and the said  
 cause coming on to be reheard, in the presence of  
 counsel, &c. the counsel for the defendant insis-  
 ted, that, &c. setting forth the substance of the de-  
 fendant's argument, as recited in the order of rebear-  
 ing,] whereto the counsel for the plaintiff insisted  
 that, &c. [Reciting what the plaintiff's counsel in-  
 sisted upon, as mentioned in the said order of rebe-  
 aring.] Whereupon this court did declare and de-  
 cree, &c. [according as it is expressed in such order  
 of rebearing.] And if upon the rebearing, the for-  
 mer order be confirmed, say, — Whereupon,  
 and upon debate of the matter, and hearing what  
 could be alledged by counsel on both sides, this  
 court declared, that the decree formerly pronounced  
 in this cause was just, and did accordingly or-  
 der that the same should stand, &c. [as it is in  
 the order.]

The words, All just allowances, in a decree, do not empower the Master to allow for improvements, but the decree must particularly mention them, which it never does, unless the party lay before the court, some proof there have been any. *Moseley,* 226.

In drawing up all dismissions made upon the hearing of a cause, you use the same words of course as you do in drawing up the decrees.

But towards the bottom or end of every decree or dismissal you draw up, in the last sheet upon the left hand you write these words, *viz.*

*It agrees with the records, orders and report, and is examined by*

*A. B. for the plaintiff.*

Which *A. B.* is the plaintiff's Six clerk, if drawn up for the plaintiff; but if drawn up for the defendant, then the defendant's Six clerk is to sign it; But if there be only one order, you say only *order*; and if no *report* in the cause, you leave the same out.

After so signed, the bag-bearer carries the same to the secretary of the decrees, and if no *caveat*, is entered by the defendant with him against signing the decree, or dismissal, the same is signed by the *Lord Chancellor, &c.* and also by the *Master of the Rolls*, if he made the decree; otherwise there is no occasion for his Honour's signing it.

## Of inrolling decrees.

AS soon as the decree is signed by the *Master of the Rolls*, (which he always does, if he pronounced the decree) and also by the *Lord Chancellor, &c.* (which must be done in all cases) you carry the

## Of intolling Decrees.

the decree to the *clerk of the chapel of the Rolls*, who, according to the length of the decree, gives you as many parchment rolls as will introl the decree; the clerk of the Rolls usually writing upon the last sheet of the decree, which is called the docquet, the day and year, and his name thereto, a memorandum that he has delivered such rolls, on which rolls the plaintiff's clerk in court, or his clerk or agent, ingrosses the decree in a strong secretary hand, (which before the late act of Parliament were always inrolled in a good chancery hand) which must be word for word as in the docquet or decree; but there is no occasion to insert in the inrollment the *Master of the Rolls* or the *Lord Chancellor's, &c.* names, but only to conclude with the end of the decree; and when the inrollment is carefully examined with the docquet of the decree, the plaintiff's clerk in court may carry both over to the *clerk of the Rolls chapel*, who will receive them, and give you a receipt for them, if you desire it: in whose custody both the docquet and inrollment are to remain for any one at any time to inspect and take a copy thereof, if he requires it, upon paying the *clerk of the chapel* for the search thereof, and also for such copy.

Decree before inrollment thereof, ought to be delivered to the adverse party, or his attorney, who is in eight days to return the same signed by the counsel of that side, or to make his objections to the draught. 7 *Vin. Abr. tit. Decree (D) Ca. 17.* — Q. Is this is now the practice.

*Caveat* prevents signing and intolling Decree for a month. *Vez. Rep. 326. pl. 160.*

Of the execution of decrees, &c.

IN order to inforce obedience to a decree, you are first to get it signed and introlled as aforesaid, and then to serve the party, by shewing the writ of execution of the decree itself under seal of the court, and delivering a true copy thereof, and if he pays not obedience thereto, on affidavit of the service thereof being filed, you may proceed to take out all the processes of contempt, as attachment, proclamation, commission of rebellion, &c. against him. And when the party is taken upon any of the said processes, he is, in strictness, to be straitly committed to prison, and not to be at liberty till he hath performed such part of the decree as is presently to be done, and given security by recognizance with sureties, if the court shall so order, to perform the other part of the decree (if any be to be performed) at future days and times appointed.

And if the decree is for land, and the party continues obstinate after his imprisonment, the court usually grants an injunction for the possession thereof to be yielded up to him for whom the decree was; and if this be disobeyed, after it is served, upon affidavit thereof, the court will grant a commission to the sheriff of the county where the lands lie, to put the party in possession: And if need be, a writ of assistance may be had, which is directed to the sheriff, commanding him to be aiding and assisting in putting the party in possession. *Vide 3 Will. Rep. 379.*

A sequestration may be granted in Scaccario, as it has always been practised in Chancery, where a decree is for a personal duty, otherwise the jurisdiction of the court of equity would be to little purpose if

## Of executing Decrees, &amp;c.

it had not sufficient authority to see its decrees executed. 2 *Freem. Rep.* 99.

If the decree is for payment of money, the writ of execution thereof, under seal, must be served; and the money demanded, by the plaintiff himself, or any one else may serve the copy of such writ on the party, only the plaintiff must be present to demand the money of the party: Or if the plaintiff is not, or cannot be conveniently present, he that serves the writ of execution of the decree, must have a letter of attorney from the plaintiff to demand and receive it.

And observe, that where a person stands out all process of contempt to *sequestration*, such *sequestration* is always granted to four or more commissioners to sequester and take into possession the real and personal estate of such person, and to receive the rents, issues and profits thereof, until he has fully performed the decree or order of the court for which such *sequestration* issued, cleared his contempts, and the court shall take other order to the contrary.

If by the decree the defendant is to produce deeds and writings, or to attend and be examined upon interrogatories, the ancient rule used to be, to serve him with a copy of a writ of execution of the decree, and shew it him under seal, and at the same time to serve him with a warrant from the Master, to give him a reasonable time to produce them: As where a man lived in *Northumberland*, he must have a longer time than if he lived near the town; and by the ancient rule no writ of execution was ever allowed to be made out till after the decree was signed and inrolled.

As this rule was anciently pursued, so it appears to be well grounded; because the party had fair notice to produce them, and an opportunity of shewing to the court his reason for not doing thereof; whereas now nothing is more common than to

take

take out two warrants from the Master, which are served on the adverse party's clerk; and on his not producing the deeds, and the Master certifying the default, a motion is presently made to produce them in four days, or stand committed; and this order is served on the party's clerk: And how it is possible for a man to produce them in four days, for a man that lives above a hundred miles off, is not easy to be accounted for.

It is therefore contrived, that upon all these motions for a man to stand committed in four days for not attending to be examined, or for not producing deeds according to the decree, the question (tho' this seems to be of course) ought to be asked, whether the party has been served with a writ of execution of the decree, and with the Master's summons served on the party personally; if he has, then on a certificate from the Master of their not being produced, or of his failure to attend and be examined, he is left inexcusable; and in that case, he ought to stand committed, and as all commitments are grounded upon some offence or other, so it has been also taken, that the offence committed is not paying duty to the great seal; and the party, in this case, may proceed, if he pleases, by way of attachment.

But why a man's liberty should be taken away, because a Master upon a second summons certifies his default, is not easily to be accounted for; notwithstanding, this is a practice now used, and it is a very old, but a true saying, that no offence can be committed but where the great seal is shewed the party. Indeed this is not so in extrajudicial matters; as in the case of bankrupts or ideots, because there they are never put under seal; and the offence in that case is for not yielding obedience to the order signed by the Lord Chancellor or Lord Keeper, to be shewn to the party against whom it is made.

The words of course of a writ of execution of an order.

To A. B. and to all and every other person and persons to whom the tenor of these presents doth in any wise relate or concern, greeting: Whereas an order hath been lately made in our court of Chancery in the words following:

The words after.

—Therefore we strictly injoin and command you the said A. B. and all and every the persons abovementioned, effectually to perform, fulfil and execute all and every the matters and things specified and contained in the said recited order, so far as the same do any way relate to or concern you, or either of you, according to the tenor and true meaning of these presents; And hereof fail not at your peril. Witness ourself at Westminster, the — day of — in the — year of our reign.

N. B. The words dotted under may be left out, if the order be such as the defendant only is to perform.

If of a decree.

To A. B. greeting: Whereas a certain final judgment or decree hath been lately made in our court of Chancery in the words following:

The

## The words after:

—Therefore we strictly injoin and command you the said A. B. effectually to perform, fulfil and execute all and every the matters and things specified and contained in the said final judgment or decree, so far as the same any way relates to or concerns you, according to the tenor and true meaning of these presents; And whereof fail not at your peril. Witness, &c.

## Before the report.

And whereas the said Master, in pursuance of the said order, made this report in the words following:

## Short writ of execution of a decree.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, To A. B. greeting:

Whereas by a certain final judgment or decree lately made before us in our court of Chancery, in a certain cause there depending, wherein C. D. is complainant, and you the said A. B. defendant, It is ordered and decreed, that you the said defendant to pay to the said complainant the sum of —— as by the said decree duly inrolled, and remaining as of record in our said court of Chancery, doth and may more fully appear: Therefore we strictly injoin and command you the said A. B. that you do immediately pay or cause to be paid unto the said complainant the said sum of —— according to the tenor and true meaning of the said decree; And whereof you are not by any means to fail at your peril. Witness ourself at Westminster, the day of —— in the — year of our reign.

## Of exemplifying decrees, &amp;c.

**A**N exemplification is the copy or example of a matter recorded or inrolled; as decrees, letters patent, depositions, &c. and is made out from the inrollment thereof, and sealed with the Great Seal: And such exemplifications are as effectual to be pleaded, or produced in evidence, as the decrees, &c. themselves are.

And bills, answers, depositions, &c. matters of record, are exemplified, as well as decrees. But observe, that nothing but matter of record ought to be exemplified. 3 Inst. 137. li. 5. 53. —— And therefore all decrees, deeds, &c. must be inrolled before they are exemplified.

An exemplification of a deed may be ordered to be pleaded at law, where the deed inrolled cannot be produced. Tot. 89.

Proofs cannot be exemplified without bill and answer; and therefore if a bill be dismissed for irregularity, or impropriety of jurisdiction, &c. as not proper for this court, or where it was by way of revivor, when it should be by original bill, so that there never was any such cause in court, the depositions in such cases cannot be exemplified, seeing the bill could not. Vide 1 Chan. Ca. 175.

Exemplifications of decrees are docqueted thus, viz.

In Chancery, 15 April 1767. An exemplification of the inrollment of a decree in this honourable court, in a cause wherein A. B. is plaintiff, and C. D. and others are defendants; exemplified at the request of, &c.

Examined { R. H. } Masters in Chancery.  
by us { F. E. }

And

And certified thus, *viz.*

*We the Masters in Chancery, whose names are  
hereunto subscribed, have carefully examined the ex-  
emplification mentioned in the docquet on the other  
side, with the enrollment thereof; and do certify the  
same to be a true exemplification of the said enroll-  
ment.*

R. H.  
F. E.

And indorsed thus, *viz.*

*An exemplification of a decree in Chancery, in a  
cause there, wherein, &c. exemplified at the request  
of, &c.*

And in the like form, an exemplification may be  
of the bill, *deditus*, answer, replication, commission,  
to examine, interrogatories, and depositions, &c.  
as follows, *viz.*

*GEORGE, &c. To all persons to whom these Bill.  
presents shall come, greeting: We have inspected a  
certain bill of complaint exhibited before us in our court  
of Chancery, remaining filed and as of record in the  
said court, in the words following.*

*We have also inspected our commission with the in- Dedi-  
dorsement thereon, directed to certain commissioners to sus-  
take the answer of the aforesaid C. D. and E. F. to  
the said bill, likewise remaining filed in our said court,  
in the words following.*

*We have also inspected the answer of the aforesaid Answer.  
defendants, taken by virtue of the aforesaid commission,  
and returned into our said court with our said com-  
mission, remaining filed in our said court, in the words  
following.*

N 3

We

**Repli-** *We have moreover inspected the replication of the aforesaid A. B. to the answer of the aforesaid C. D. and E. F. remaining filed as of record in our said court, in the words following.*

**Com-** *We have likewise inspected our writ directed to certain commissioners to examine witnesses with the schedule of oaths thereto annexed, between the aforesaid parties, with the indorsement thereon made, remaining as of record in our said court, in the words following.*

**Interro-** *We have likewise inspected certain interrogatories on the part of the said A. B. complainant, against the aforesaid C. D. and E. F. defendants, exhibited before the said commissioners, remaining as of record in our said court, in the words following.*

**Deposi-** *And lastly, we have inspected the depositions of certain witnesses taken and examined before the said commissioners on the behalf of the said A. B. complainant, against the aforesaid C. D. and E. F. defendants, by virtue of our aforesaid commission, and returned into our said court with the commission and interrogatories aforesaid, and there remaining as of record in our said court, in the words following.*

**Conclu-** *Which said bill, and the commission to take the said answers and indorsement thereon, and also the said answers, replication, commission to examine witnesses, and indorsement thereon, with the schedule of oaths thereto annexed, interrogatories and depositions of witness, we have at the request of the said A. B. exemplified by these presents, and in testimony thereof have caused these our letters to be made patent. Witness ourself at Westminster, &c.*

**Decree.** *GEORGE the third, &c. We have inspected the enrollment of a certain final judgment or decree lately*

lately made before us in our court of Chancery, and remaining as of record on the rolls of the said court, in the words following.

We therefore at the request of the said complainant Conclusively exemplified the said final judgment or decree by fiction, these presents, and in testimony thereof have caused these our letters to be made patent. Witness, &c.

### Of reviving decrees, &c.

**B**IILLS of revivor of decrees, and other proceedings are necessary where a suit happens to be discontinued, which is generally by reason of the death either of the plaintiff or defendant, before the decree inrolled.

Where a decree is inrolled, and a party dies, or a female plaintiff marries, decree and proceedings must be revived by a *subpæna scire facias*, though in case of a decree inrolled a revivor by bill hath been allowed. *1 Chan. Ca. 37.*

But where a decree is not signed and inrolled, a bill of revivor must be brought.

And it is said, where one can revive by a *subpæna sci' fa*, it is in their election to do it either by that process, or by bill of revivor: But where after the decree there have been other proceedings, which cannot be revived by the said *subpoena*, this sure must be done by bill. *Vide 2 Chan. Rep. 67.*

If the parties that would revive the decree inrolled, be in privity of blood to the first parties, viz. as heirs; or in privity of contract, as executors or administrators, they may revive it by *subpæna sci' fa*.

Where the decree was obtained against the ancestor, and his heir does not claim under that title, but by virtue of another title paramount; as where an estate is decreed against a man, and his heir insists

his father had not title thereto, or was only tenant for life thereof, the decree can never be carried into execution against him; he is at liberty to controvert the justice and validity of the decree, and may make a new defence from what his ancestor did, and vary his case as he shall be advised, and the parties go into new examination of the matter, and hear the cause *de novo*; and the court judges whether the decree is right or not, and may affirm or reverse it at their pleasure.

But where one man obtains a decree against another, for a real estate, and the party dies before the plaintiff is put in possession; in that case, if the heir at law claims the estate by descent under his ancestor, or as devisee under him, he shall never controvert the justness of the decree, though his ancestor should have mistaken his defence; nor shall he be at liberty to make a new defence, or enter into new proof, so as to overthrow the former decree; especially when it appears to the court that the decree has been of an ancient standing.

If an administrator obtains a decree, but dies before enrollment, the administrator *de bonis non* may revive this decree within the equity of the stat. 30 Car. 2 c. 6. *Owen and Curson, 2 Vern. 237.*

This *subpoena* is obtained either on motion or petition, and must be served two days at least before the return; in all other respects the service is like that of a *subpoena* to answer. And on the return of the *subpoena*, if no cause be shewn to the contrary, the decree will, upon affidavit of service, and a motion to that purpose, be ordered to stand revived.

But if there be neither privity in blood, nor privity in contract, the decree or cause must be revived by an original bill, and not by *sci' fa'*, or bill of revivor. And therefore an assignee, or a devisee, cannot have a bill of revivor, being in nature of purchasers only. *Vide 1 Chan. Cases 122, 174.*

On

## Of reviving Decrees, &c.

On an original bill in nature of a bill of revivor of a decree, a devisee shall have the same advantage of the decree as an heir or executor. 1 *Vern.*

548.

Also a bill of revivor lies not upon a decree of a long standing; but in such cases an original bill is to be exhibited, and the decree to be set forth as evidence. 1 *Chanc. Cases* 216.

A decree was signed and inrolled, omitting part of the matter decreed, and the defendant being dead, (so that there was no helping it by motion) a bill of revivor was brought to revive (as was alledged) the part of the decree omitted, though in truth it extended to the whole decree. To this the defendant pleads, that the decree being inrolled, a bill lay not, but a *subpæna sci' fa'*. But the plea and demurrer were over-ruled; and it was held that a *sci' fa'* would only have revived the decree, and the proceedings before it, but not those afterwards. 1 *Chanc. Cases* 37.

A bill of revivor was brought where there had been some proceedings touching costs after the decree, and adjudged good. 2 *Chanc. Rep.* 67.

No bill of revivor can be brought, where it relates to costs only, (unless the costs are taxed, and a report made in the life-time of the party) for this is a personal action, and *actio personalis moritur cum persona*. But if by the decree the party is to pay a sum of money, or if a duty is decreed, or if he is to deliver over a bond or deed or writing, or if any thing is annexed to the decree besides costs, the suit may be revived. See 1 vol. 273. *Bunb. Rep.* 47. pl. 72. *Id.* 160. pl. 230. *Sel. Cas. in Chanc.* 21, 54. 2 *Vern. Rep.* 232.

And yet a bill of revivor lies not to revive a decree made for costs only. *Ibid.* 195 and 246. and 2 *Chanc. Cases* 7.

And

And it is said, no defendant, or any other who represents him, can or ought to revive in case of an abatement happening before the decree be signed and inrolled. 2 Chanc. Rep. 195.

## C H A P. V.

*Of reviewing and reversing decrees.*

WHEN a decree comes to be reversed on a bill of review, it ought to be either because it was unjust in matter of law arising within the body of the decree, or proceedings in the cause, or for that the court wanted, or exceeded its jurisdiction.

As in the case of bills of revivor, so also in bills of review, none but such as are parties, or privies, can commonly bring them; but in some cases, where a man's interest is affected, or he is grieved by a decree, he may have this bill; as where a parish was sued, and four of the parishioners named only to defend, another parishioner may bring this bill. Chanc. Cases 272.

As the end of a bill of review is to reverse a decree formerly made; in order to proceed therein, first a copy of the decree, after it is signed and inrolled, is to be procured, and then reciting the former proceedings, as they are recited in the decree, you are to set forth the party's case, and assign the reasons why the decree should not be binding, but reversed as for error in law, &c. And this bill cannot regularly be brought upon any matters in fact, or matters of record than the decree itself; yet if there be oath made of the discovery of new matters, which could not possibly be had or used at the time when the decree passed, a bill of review may be exhibited by leave of the court, but not otherwise.

## reversing Decrees.

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wise. *Vide Tab. 42. Gilb. 184.* And by a late order made the 7th of October 1741, no supplemental or new bill, in nature of a bill of review grounded upon any new matter discovered or pretended to be discovered since the pronouncing of any decree of this court, in order to the reversing or varying of such decree, shall be exhibited without special leave of the court first obtained for that purpose; and unless the party exhibiting the same do first deposit with the register of this court so much money, as together with the deposit, by the rules of this court to be made on obtaining a rehearing of the cause or causes wherein such decree was pronounced, will make up the sum of fifty pounds, as a pledge to answer such costs and damages as shall be awarded to the adverse party, in case the court shall think fit to award any at the hearing of the cause on such supplemental or new bill.

No witnesses which were or might have been examined on the former bill, shall be examined on a bill of review. Nor shall any new evidence, or matter then in the knowledge of the party, and which might have been used before, be a sufficient ground for a bill of review. *3 Chan. Rep. 76. 1 Chan. Ca. 43. S. P. 2 Chan. Rep. 45. S. P.*

The matters assigned for error must appear in the decree itself. And no errors can be assigned on a bill of review, but errors in law; which must appear from the facts stated in the decree; and if new matter be discovered afterwards, it can only be assigned for error with the leave of the court. *1 Vern. 166, 292.*

If a decree be against a statute, it may be reviewed and reversed: So if the Chancellor errs in a decree in a matter of law, and it appears within the decree, this decree may be reviewed for this error. *1 Roll. Abr. 332.*

But

## Of reviewing and

But if the *Chancellor* errs in his decree upon a matter of fact, this decree is final, and cannot be reviewed, because the parties cannot go to a new examination of witnesses now; for after publication this may not be done. *1 Roll. Abr.* 382. And where the decree is final, and cannot be reviewed, it is also observed, that it cannot be altered by original bill, unless for matter subsequent. And yet if the *Chancellor* errs in his conscience, upon a matter of fact proved before him, there may be review of this matter; because there needs no new examination; but this may be reviewed upon the old depositions, which is usual. *1 Roll. Abr.* 382. *Vide Chan. Ca.* 45.

It has been insisted on as a rule, That nothing shall be a ground to direct a new trial to avoid judgment at law, that would not be a ground for a bill of review to reverse a decree; and that a confession subsequent to the decree is no ground for a bill of review; nor is the want of any evidence or matter which might have been used in the first cause, and of which the party had then knowledge. *3 Chan. Rep.* 76. *1 Chan. Ca.* 43. S. P. *2 Chan. Rep.* 45. An account was decreed, pending which the suit abated; and yet the account was carried on, finished and confirmed by decree, and held to be no error, or cause of reversal on a bill of review brought. *1 Chan. Ca.* 44, 45, 122. But *qui est* if this account could be carried on, as the suit abated, without bringing a bill of revivor, and an order obtained for reviving the former proceedings.

If a decree, or any part of it, be in the nature of things impossible, or if it be repugnant, and one part contradictory to the other, it is erroneous, and may be reversed on a bill of review. *1 Chan. Ca.* 86. But though there be apparent error in the decree, if the party has rested under it sixteen or twenty years, the court in some cases will not reverse

it upon a bill of review. 1 *Chan. Rep.* 140. Also the court will not reverse a decree for want of form, or mistaking in an account; for that may be helped by a Master, without reviewing: No bill of review, or other new bill, shall be admitted to change or alter a matter already decreed, till the party hath obeyed the decree in all things, which stand upon the strength of the decree only; wherein the court can set him in as good a state again as he was, in case the former decree should happen to be reversed: And where the decree is to yield up the possession of lands, deliver writings, or pay money, &c. he must first perform these things before he is admitted to a bill of review; except the court see cause to dispense with the manner of the performance, viz. if money is decreed, the court will sometimes accept of good security. *Totb.* 42. 1 *Chan. Ca.* 42, 86. *Vide* 1 *Chan. Rep.* 139. 2 *Chan. Rep.* 48.

But if the decree requires an act to be done, which would extinguish the party's right at common law; such as conveying lands, releasing a debt, acknowledging satisfaction, cancelling evidences, &c. these parts of execution of the decree will be spared, and of course be stayed by order of court, until the bill of review be determined; though the plaintiff in review must move for an order to stay the execution of the decree in these or the like particulars, or what else is proper to be stayed, if he expect to have it so. 1 *Chan. Ca.* 42.

A decree (and much more an interlocutory order) gained by fraud may be set aside on a petition, (as well as a judgment at law by motion—) *a fortiori* may such decree be set aside by bill. 3 *P. Will. Rep.* 111. By Lord Chancellor *arguendo*.

On a bill of review the cause for review must arise and appear upon the case as it is stated in the decree, and the facts must be admitted as they are stated. *Vide* 1 *Chan. Ca.* 54, 55.

The

## Of reviewing, &amp;c.

The plaintiff, who had a decree, brought a bill of review, and thereby complained, that he had not enough decreed him; and a demurrer being made thereto, for that if a bill of review lies, it is only for him against whom the decree is; after a long debate, the demurrer was allowed, and the bill of review dismissed. And where a former bill of review had been dismissed, the party brought another suggesting farther errors, &c. But this was dismissed also on the maxim, *Interest reipublice ut sit finis litium.*

If a man brings a bill of review, to which there is a demurrer, which is allowed, he cannot afterwards bring a new bill of review. 1 Vern. 44. 2 Vern. 417. S. P.

A bill of review lies not after a bill of review. 1 Vern. 135. 2 Chan. Ca. 133.

Where a demurrer to a bill of review is allowed, it may be inrolled; but if over-ruled, it cannot, so as to prevent the demurrer's being re-argued. 2 Vern. 120.

Sometimes bills in nature of bills of review are brought in this court against decrees and other proceedings in Ireland, and limited jurisdictions in England: And decrees of inferior courts may by bill here be examined, and affirmed or reversed, as the court sees cause.

But such bills are more properly *bills of reversal*, and not *bills of review*. And decrees made in Ireland may be appealed from to the House of Lords here, and either confirmed or reversed by that House; so likewise may decrees made by the court of Exchequer here, and also decrees of other inferior courts.

Where error appears in the body of the decree drawn up and inrolled, the court will open the decree. Proc. in Chan. 260, 261.

The same decree gives liberty to try the title at law, and yet awards injunctions to put plaintiff into possession, and quiet him in his possession; reversed is repugnant. See 2 R. 9. Cas. abr. 281. pl. 2.

Note, That besides this manner of reversing decrees, they may also be reversed by *appeals in Parliament*.

## C H A P. VI.

### Of Appeals in Parliament. (a)

THERE are two ways for reversing decrees of this court; the one by bills of review in the same court, already treated of; the other by appeals in Parliament. And though, when the decree is to be reversed by a bill of review, the matter assigned for error must appear in the decree itself; yet when you proceed by appeal in Parliament, any matter may be assigned therein, although not appearing in the decree.

If either party thinks himself aggrieved by a decree, he may by petition appeal to the Lords in Parliament, and have the case reheard there, and they will affirm, alter, or reverse the decree, as they see fit.

But observe, that an appeal cannot regularly be made to the house of Lords, till after a re-hearing before the Chancellor, if the cause was heard by the Master of the Rolls: Though if a decree be made by the Master of the Rolls, and the same is signed and enrolled, yet there can be no rehearing thereof before the Chancellor; but such decree must be appealed from to the House of Lords.

On an appeal from a decree; new matters may be read, not formerly in proof. Gilb. 151. *Sed vide* *ut. in Chan. 295.*

(a) An appeal lies not to the House of Lords, from a sentence by delegates, or from a decree on the statute of charitable uses. Ver. 118.—By a standing order of the House of Lords, made March 24, 1725, appeals are to be brought within five years after the decree or order in the court below is signed and enrolled. Fortes. Rep. 10. Moseley 30.

## Of Appeals in Parliament.

An appeal against inrolling a decree, is only to give the court an opportunity of hearing what could be said against it. *Gilb. 151.*

*Ergo* on such an appeal the cause is intirely open, and the party at liberty to offer what he can. *Gilb. 152.*

Appeals are to be signed by two noted counsel, and exhibited by way of petition, and lodged with the clerk of the House of Lords, with whom the appellant is to deposit twenty pounds to recompence the other party his costs, in case he fails in his appeal, &c.

The appeal being thus lodged, and read in the House, the respondent is ordered to have a copy of the appeal, and required to put in his answer thereto on a day fixed; and a day is appointed for hearing the cause, in order as the appeals come in, and notice is given thereof to the appellant's solicitor, who may get a summons served on the other side to appear, &c.

These appeals can only be argued by two counsels on each side: And after hearing counsel on the appeal, and upon the answer on due consideration thereof, the Lords order and adjudge that the decree of the *Chancery* be varied in such manner as their Lordships think fit, or that the petition and appeal be dismissed, and the decree affirmed with costs, &c. A majority of the Lords finally determines the cause.

Sometimes the House of Lords direct an issue of law for trial of some point necessary between the parties; and after such trial to resort back to the court of *Chancery*, for their farther directions in that matter.

And printed copies of the appellant's and also the respondent's case are usually delivered to the Lords for their better information of the matter in controversy; which cases, before printed, are always signed.

gned by two counsel, viz. the plaintiff's case by  
two of his counsel, and the defendant's case by two  
of his counsel; whose respective names are printed  
at the bottom of the cases.

*A petition and appeal to the House of Lords:*

Between A. B. plaintiff,  
C. D. defendant.

To the Right Honourable the Lords spiritual and tem-  
poral in Parliament assembled.

The humble petition and appeal of the plaintiff. A. B.  
Sheweth,

THAT M. &c. [Set forth your case.]  
That your petitioner sometime in or about  
term, exhibited his bill in the high Court  
of Chancery against the said C. D. to be relieved,  
&c. [Set forth the prayer of the bill] To which  
bill the said C. D. appeared and answered, and  
thereby insisted that, &c. [Set forth such parts of  
the answer which he insisted upon against the plaintiff's  
bill.]

That your petitioner having replied to the said  
answer, and the said defendant having rejoined, the  
said cause was at issue, and divers witnesses being  
examined on both sides, the same came on to be  
heard before the late Lord Chancellor of Great Bri-  
ain the \_\_\_\_\_ day of \_\_\_\_\_ 1767, when al-  
though the said C. D. had by his answer expressly  
sworn, &c. [the reasons admitted by his answer, and  
which you appeal,] yet his Lordship was pleased  
to decree that, &c. [Set forth the decree, and if  
there were any subsequent proceedings before the Master,  
the like, set them forth briefly.]

That your petitioner is advised the said decree  
(and subsequent orders) are erroneous, and humbly  
appeals therefrom to your Lordships.

## Of Appeals in Parliament.

Your petitioner therefore humbly prays your Lordships to grant to your petitioner your Lordships order of summons to the said C. D. to put in his answer to this your petitioner's appeal at such time as your Lordships shall prefix, in order that your Lordships may hear the said cause, and that your Lordships will be pleased to reverse the said decree (and subsequent orders) in the said cause, or grant to your petitioner such relief in the premisses as to your Lordships in your great wisdom shall seem meet.

*And your petitioner shall ever pray, &c.*

A. B. (the appellant.)  
 G. H. } counsel.  
 J. K. }

*The respondent's answer.*

*The answer of C. D. to the petition and appeal of A. B.*

**T**HIS respondent not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition and appeal mentioned and set forth, for answer thereunto, saith That he believes it to be true that such decree (and subsequent orders) as are complained of, were made by the court of Chancery as in the said petition and appeal are mentioned and set forth: But as to the dates, substance and contents thereof, this respondent humbly craves leave to refer thereunto when the same shall be produced; and this respondent humbly conceives and is advised that the said decree (and subsequent orders) are agreeable to equity and justice, and therefore humbly hopes that the same shall

be affirmed, and that the said petition and appeal shall be dismissed this most honourable House with costs.

L. M. (counsel.)

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C H A P. VII.

*Of costs in general (a).*

(a) An infant pays no costs on a bill filed by the prochein amy. Str. 708. Sel. Cas. in Chanc. 49. 2 Will. 297. 2 Eq. Cas. abr. 238. Pl. 18.

WHEREVER the court decrees the party to pay costs personally, in that case the Master taxes them, and you proceed by *subpoena* and attachment for recovery thereof: But where the court directs that they shall be paid out of a real or trust estate, and not by the person of the party, if the estate is sold, the costs are usually paid out of the purchase money, or out of the profits in the receiver's hands; or if the party who is to pay them, has sufficient profits in his hands, the court will direct him to pay them thereout, or send him to an inquiry before a Master, whether there is sufficient for the purpose, or not.

It is said in the court of exchequer, if a man brings a bill for 5000*l.* and recovers only 5*l.* the defendant shall pay him his costs throughout; but not so in Chancery, for the party shall have costs only so far as he prevails in his suit; and it shall be referred to a master to distinguish the same: And this rule is founded upon good reason; for if a plaintiff sets up your demands, and prevails only in one, it is unreasonable he should have costs throughout; therefore he must pay costs where he does not prevail, or at least lose all the rest of his costs, if he does not pay them to the other party; and in this case the master must look over all the proceedings which relate to the matter prevailed in, and no farther.

## Of Costs in general.

There was an order made in Lord Keeper Wright's time, that no exception should be allowed to a report of taxing costs, and has been since pursued with this difference, that where the Master allows such costs as ought not to be allowed by law, in such cases, though it very seldom or never falls out, the court will indulge the party to except touching this point.

The court never refuses upon a clerk or solicitor's petition to have his bill taxed; and it was settled on debate, that the court cannot order the client to pay what is taxed, because it may be recovered by law.

But it is otherwise on client's petition to submit to payment of what is due; in that case the clerk or solicitor, where the bill is taxed, may take out a subpoena for the costs, and proceed by attachment, as in other cases; and this becomes a personal demand upon his client.

As to scandals, there are many cases where though the words in the record are very scandalous and highly reflecting on the party, yet the court does not think them so; especially where they are material, and tend to a discovery of the very matter in question; for a man may be guilty of a very notorious scandal, or of a scandalous action, as in case of a brokerage bond given before marriage to draw in a woman to marry, where a man is represented to have a great estate, and such like: And the court judges whether the matter may *prima facie* be scandalous; yet if it is of absolute necessity so to be, the court never looks upon it to be scandalous.

But where the scandal is altogether malicious and foreign to the point in question, in all these cases the Master reports it scandalous, where the court orders the Master to expunge it with costs paid and received. The Master generally gives full costs and at the end of the bill 20*l.* &c. which the par-

## Of Costs in general.

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may be supposed to have suffered in his reputation by the scandal; and it is discretionary in the Master to allow what he pleases.

As to what concerns scandals or impertinencies in any bills, answers or records of the court, they are always referred to a master, and the costs paid on which soever side the report falls,

Impertinencies are, where the records of the court are stuffed with long recitals, digressions of matter of fact, unnecessary and immaterial to the point in question; as where a bill of review is brought, and the party sets forth *in bac verba* not only the other bill and answer, but the whole proceeding in the cause; which being all matters of record, and fair copies of which the party has once paid for, he ought not to pay for them over again: There is no occasion to set them forth *in bac verba*, or make an unnecessary repetition, for they ought to be concise and short; for where a bill of revivor is grounded on another bill and proceedings, they go no farther than saying, that such a one in or about such a term exhibited his other bill into this honourable court, to be relieved touching certain matters and things therein contained, as by the same bill duly filed and remaining, &c. that witnesses being examined, publication passed, and the cause being at issue came on to be heard such a day, when it was ordered so and so; and there take in the ordering part of the decree very shortly, and no more than what is material to the revivor, and the register's recitals are wholly omitted; for when a decree is inrolled, it is never done from the register's recitals, which are very often mistaken.

If any dispute arises, the bill and answer must be read.

This *short* method of drawing a bill of revivor must be observed by the draughts-man, viz. that the former proceedings be recited in the shortest

## Of Costs in general.

manner possible, since they can be of no use to his client; for from the records alone the fact must be determined; if otherwise set forth they are impertinent, and will be expunged with costs. All the defendant has to do, is by answer to set forth, he believes there was such a suit, decree and proceedings, and refers to records; and as it is hard for the suitor to pay costs for this impertinence, who is ignorant of the matter, and it is the fault of the counsel, so it sometimes falls out, that the court will pass a censure on such counsel who signed the pleadings; and precedents may be found, where the court has ordered counsel to pay costs out of his own pocket, which would prevent counsel from stuffing the bills with tautology or impertinency: And the same rule ought to be held in exceptions to a report; for some counsel will sign the exceptions, and perhaps most of them are frivolous and vexatious, and they ought for the ease of the court to be discouraged wherever met with; and the court is of necessity to take notice of the counsel who signed the same.

Bill brought against a corporation to discover writings.—The defendants answer under their common seal, and so, not being sworn, will answer nothing in their own prejudice.—Ordered that the clerk of the corporation, and such principal members as plaintiff thinks fit, answer on oath; and that the Master settle the oath, *1 Vern. 117.*

Several persons inclosed lands under a custom, another brings eight actions against them.—A bill is brought to stay proceedings at law, and to establish the custom. On issue directed a verdict found in favour of the Custom.—Defendant shall pay costs at law and equity. *Barnard. 436.*

Executor bringing a frivolous bill, ordered to pay costs out of the assets,—if assets denied, to be examined on interrogatories. *Sel. Ca. in Chancery 62.*

Feme sole brings a bill, then marries.—Baron and Feme bring a bill of revivor, and have a decree with costs, they shall have costs for the whole suit, except the bill of revivor. *1 Vern.* 318.

One protected by the Genoese ambassador brought a bill in Chancery, and was ordered though after (a) (a) But it has been denied in the

Exchequer. *Bunb. Rep.* 183, pl. 258, and so it has in that court even before answer, where the bill was for an injunction to stay the defendant's proceedings at law in ejectment, because the plaintiff was in a manner forced into this court (viz. Exchequer) and did not come in originally. *Bunb. Rep.* 272, pl. 349. If the motion be before answer the defendant will not be obliged to put one in until Plaintiff give bond with a surety to the senior fix clerk, not towards the cause, in 40l. penalty for answering costs, *2 Will.* 452, pl. 142. *Moseley 7. 175.* pl. 89.

answer put in, to give (b) security to answer the costs in the same manner as if he were a foreigner, because by Stat. 7. An. c. 12. All process against ambassadors and their servants are made void, so that if the bill should be dismissed, no process could issue against him. *Bac. Abr.* 87. *Eq. Cas. abr.* 350, pl. 4. *Moseley 175.* pl. 89. *Bunb. Rep.* 183, pl. 258.

(b) A deposit in money will not be permitted, instead thereof.

*Bunb. Rep.* 35, pl. 53.

Costs shall follow the event of an account. See 2 *Eq. Cas. abr.* 237.

[For more of costs in general. See 2 *Eq. Cas. abr.* 237.]

Earl Chancellor Hardwicke admitted it to be a general rule of this court, that where bill is dismissed with costs, and nothing is directed by decree, but awarding costs, and nothing further remains to be done in the cause; by death of party before costs taxed, they being a personal demand, die with the person and are lost; and that there cannot be a bill of revivor (1) for costs alone: if costs of suit have been taxed, proceedings may be revived, for purpose of enforcing costs, notwithstanding death of party, against whom same were decreed, by process for them, against party's representative; difference court always takes and rule thereof upon

(1) *Sel. Cas. in Chanc.* 21, 54.

## Of Costs in general.

which it is founded, though always considered a hard and strict, and to turn upon a nice distinction, is, whether there has been a taxation or not, tho' the right is as well ascertained before as after; and there are several exceptions thereto, as where costs are connected with duty, or where directed to issue out of particular fund, though nothing more is to be done in this case, if party dies, still costs shall be paid out of that fund; and indeed, whenever court fees reasonable foundation for going out of general rule, they always follow it, in order to answer justice of case. 2 *Ves. Rep.* 580, 581.

**COSTS**

COSTS  
OF THE  
GENERAL PROCEEDINGS

IN  
CHANCERY.

**TAKING** Instructions for bill  
Drawing bill in Chancery per fo.  
Ingrossing thereof per fo.  
Parchment according to the size of the skin  
Duty to each skin  
Filing the same  
Copy for counsel per sheet  
To council to peruse and sign (or according to length)

Disbursement	Agent	Solicitor
l. s. d.	l. s. d.	l. s. d.
0 0 0	0 0 0	0 6 8
0 0 0	0 0 4	0 0 6
0 0 0	0 4	0 0 4
0 0 0	0 0 0	0 0 0
0 2 0	0 2 0	0 2 0
0 5 4	0 5 4	0 5 4
0 0 0	0 2 0	0 0 2
1 0 0	0 0 0	1 0 0

Attending

## Of Costs in general.

	Disbursement	Agent	Solicitor						
	l.	s.	d.	l.	s.	d.	l.	s.	d.
Attending him	0	0	0	0	3	4	0	6	1
Close copy of bill per sheet	0	0	0	0	0	2	0	0	2
Filing bill	0	5	4	0	5	4	0	5	4
Fee for every three defendants to clerk in court	0	3	4	0	3	4	0	3	4
Ditto from four to six defendants	0	6	8	0	6	8	0	6	8
Subpoena to answer with two names	0	4	6	0	4	6	0	4	6
Ditto with three names	0	5	0	0	5	0	0	5	0
Drawing petition of defendants residing within 10 miles of London, in order to make subpoena returnable immediately	0	0	0	0	0	0	0	4	0
Paid at the rolls answering the same	0	5	6	0	5	6	0	5	6
Drawing up order	0	4	6	0	4	6	0	4	6
Entering ditto	0	1	6	0	1	6	0	1	6
Copy and service	0	2	0	0	2	0	0	2	0
Drawing and ingrossing affidavit of a defendants residing within ten miles of London, duty, and oath	0	0	0	0	5	6	0	5	6
Filing affidavit	0	4	6	0	4	6	0	4	6
Copy and service of subpoena on every defendant	0	0	0	0	0	0	0	5	0
Drawing and ingrossing affidavit of service of subpoena stamp and oath in the country	0	0	0	0	0	0	0	6	6

Ditto

	Disbursement			Agent			Solicitor		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Ditto in London	0	0	0	0	5	0	0	5	0
Filing affidavit per sheet	0	0	8	0	0	8	0	0	8
Attachment of contempt	0	6	6	0	6	6	0	6	6
Costs on ditto	0	10	0	0	10	0	0	10	0
If defendant be arrested	0	13	0	0	13	0	0	13	0
Proclamation and distrin-									
gas	0	6	6	0	6	6	0	6	6
Costs on ditto	1	1	0	1	1	0	1	1	0
Writ of rebellion	0	19	10	0	19	10	0	19	10
Costs on ditto	2	6	8	2	6	8	2	6	8
Paid returning each	0	2	0	0	2	0	0	2	0
Drawing affidavits of any									
length per fo.	0	0	0	0	0	0	0	0	8
Paid for returning each	0	2	0	0	2	0	0	2	0
Distringas, defts. costs,									
and duty	0	7	2	0	7	2	0	7	2
Entering appearance with									
register	0	0	0	0	3	4	0	3	4
Dedimus to take answer	0	9	10	0	9	10	0	9	10
Dedimus special to plead									
answer on demurrer	0	0	0	0	0	0	0	12	8
Taking instructions for									
answer	0	0	0	0	0	0	0	6	8
Drawing answer per sheet	0	0	0	0	0	4	0	0	6
Ingrossing per sheet	0	0	0	0	0	4	0	0	4
Stamp for each skin	0	2	0	0	2	0	0	2	0
Parchment according to									
length	0	0	0	0	0	0	0	0	0
Copy of answer for coun-									
cil, per sheet	0	0	0	0	0	2	0	0	4
To council to peruse and									
sign	1	1	0	1	1	0	1	1	0
Attending him	0	0	0	0	3	4	0	6	8
Close copy answer, per									
sheet	0	0	0	0	0	2	0	0	2

Drawing

## Of Costs in general.

	Disbursement	Agent	Solicitor
	l. s. d.	l. s. d.	l. s. d.
Drawing notice to take answer, copy and service Commissioners to take answer each (but if obliged to go a journey more)	0 0 0	0 0 0	0 9 3
Certificate of answer come in	0 0 0	0 0 0	0 6 8
For a common injunction and stamps	0 2 6	0 2 6	0 2 6
For a special one	0 0 0	0 0 0	1 3 2
Office copy of bill and answer, per fo.	0 0 0	0 0 0	1 12 0
Fair copy of bill, per fo.	0 0 11	0 0 11	0 0 11
Commission to examine witnesses	0 15 10	0 15 10	0 15 10
Joining in commission and attending striking commissioners	0 0 0	0 0 0	6 8
Subpoena <i>ducens tecum</i>	0 0 0	0 0 0	8 6
Serving witnesses each	0 0 0	0 0 0	2 6
Drawing interrog. per fo.	0 0 0	0 0 0	0 0 0
Fair copy for council per fo.	0 0 0	0 0 0	0 0 0
Paid council to settle and sign, or according to length	1 1 0	1 1 0	1 1 0
Attending him thereon	0 0 0	3 4 0	8
Each commissioner examining witnesses, per day	1 1 0	1 1 0	1 1 0
To each clerk engrossing, ditto	0 10 6	0 10 6	0 10 6
Stamps and parchment (according to what used)	0 0 0	0 0 0	0 0 0

Examining

	Disbursement	Agent	Solicitor
Examining each witness at examining office, duty and oath	1 3 6	1 3 2	2 3 2
Solicitor attending each day	0 0 0	0 0 0	0 0 4
Copy and duty from office per sheet	0 6 11	0 11 0	0 11 0
Every exhibit	0 2 6	0 2 6	0 2 6
Rule for publication	0 4 4	0 4 4	0 4 4
Setting down cause in paper	0 1 0	0 0 1	0 1 0
Setting down any cause at Lord Chancellors	1 0 0	0 1 0	0 1 0
Setting down cause at the rolls on six clerks certificate	0 0 1	0 0 1	0 0 1
Ditto on equity receiv'd	0 12 6	0 12 6	0 12 6
Ditto as to costs	0 12 6	0 12 6	0 12 6
Ditto for further directions	0 12 6	0 12 6	0 12 6
Ditto papers in each cause left at rolls	0 5 0	0 5 0	0 5 0
Drawing brief, per fo.	0 0 0	0 2 0	0 2 0
Fair copy of each brief sheet	0 0 0	2 6 0	2 6 0
To council according to length	0 0 0	0 0 0	0 0 0
Attending council	0 0 0	0 0 0	0 0 0
Attending the hearing so long as cause is in the paper, clerk, and solicitor	0 0 0	0 0 6	0 0 8
Fees in court	0 0 0	6 8 0	13 4
If bill dismissed without costs, both plaintiff and defendant pay each court fees	0 10 0	0 10 0	0 10 0
	0 10 0	0 10 0	0 10 0

Fees

	Disbursement		Agent		Solicitor	
	l.	s.	d.	l.	s.	d.
Fees on hearing a de- murrer	0	10	0	0	10	0
Drawing order for the first side 3s. for every other side 2s.	0	0	0	0	0	0
Stamp for every four sides	0	1	6	0	1	6
The word decree in any order	0	12	0	0	12	0
The word dismission	0	10	0	0	10	0
Register entring order 1st side 1s. 6d. every other side 6d.	0	0	0	0	0	0
Copy and service per order	0	0	0	0	0	2 0
If personal service on a clerk in court	0	0	0	0	0	2 6
If order special copy, per sheet	0	0	0	0	0	0 4
Drawing a common peti- tion	0	0	0	0	0	2 6
Stamp	0	1	6	0	1	6
Answering by Lord Chan- cellor	0	10	0	0	10	0
Answer by the Master of the Rolls	0	5	6	0	5	6
For attendance petition at the Rolls	0	6	6	0	6	6
Copy of petition with order for attendance, per fo.	0	0	0	0	2	0
Drawing affidavit of ser- vice, duty and oath	0	0	0	0	6	0
Office copy of affidavit per fo. 2 s. first side and 8d. all other sides	0	0	0	0	0	0

Drawing

Of Costs in general.

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	Disbursement	Agent	Solicitor
	l. s. d.	l. s. d.	l. s. d.
Drawing charge and dis- charge before the master, per fo.	0 0 6	0 0 6	0 0 6
Fair copy for the master per fo.	0 0 0	0 0 6	0 0 6
Warrant, clerk and service	0 2 0	0 3 0	0 3 0
Attending every warrant	0 0 0	0 3 4	0 6 8
Office copy of master's report, per fo.	0 0 0	0 0 0	0 0 6
For attending and settle- ing defendant's report	0 0 0	3 4 0	6 8
Subpoena to hear judg- ment	0 4 6	0 5 0	0 5 0
<i>Ne exeat regnum</i>	0 15 4	0 15 4	0 15 4
<i>Habeas corpus</i>	0 14 8	0 14 8	0 14 8
To council for every com- mon motion	0 10 6	0 10 6	0 10 6
For every notice of mo- tion, copy and service	0 0 0	1 0 0	2 0
Attending council and court on every motion	0 0 0	3 4 0	6 8
Fees in court on assigning guardian for an infant at Rolls	0 6 0	0 6 0	0 6 0
Ditto at Chancery	0 10 0	0 10 0	0 10 0
Fees on hearing petition at Rolls	0 6 0	0 6 0	0 6 0
Ditto in court	0 10 0	0 10 0	0 10 0
Drawing affid. of service, copy, duty, and oath	0 0 0	0 0 6	0 0 6
Certificate of no cause shewn	0 0 0	0 0 5	0 0 6
Costs allowed on demurrer if over-ruled	0 1 6	0 1 6	0 1 6
Costs on excepting if deft. submit to answer be- fore making report	0 0 0	0 0 5	0 0 6
	1 10 0	1 10 0	1 10 0

After

## Of Costs in general.

	Disbursement	Agent	Solicitor
	l. s. d.	l. s. d.	l. s. d.
After report in town	2 0 0	2 0 0	2 0 0
If answer by commissioners	2 10 0	2 10 0	2 10 0
If second answer be insufficient, defendant pay	3 0 0	3 0 0	3 0 0
If third answer (and so on)	4 0 0	4 0 0	4 0 0
A receipt from a master	0 2 6	2 6 0	2 6 0
Writ of execution of a decree, if long, per skin	0 0 0	0 0 0	1 6 8
Copy of ditto per skin	0 0 0	0 0 0	5 0
Exemplification of ditto per skin -	0 0 0	0 0 0	1 6 8
Ditto per master per skin for every three skins	0 0 0	0 0 0	6 8
Doggettting per skin	0 0 0	0 0 0	2 0
Signing per Lord Chancellor	0 10 0	0 10 0	0 10 0
Hanaper fee	1 13 8	1 13 8	1 13 8
Bag bearer	0 5 0	0 5 0	0 5 0
Entring <i>caveat</i>	0 5 0	0 5 0	5 0
Taking money out of court in usher's hand per pound	0 0 2	0 0 2	0 0 2
A receipt for it	0 2 6	0 2 6	0 2 6
Acknowledging a recognizance every name	0 2 0	0 2 0	0 2 0
To the clefks	0 0 6	0 0 6	0 0 6
Stamp	0 2 0	0 2 0	0 2 0
Paid for filing the answer	0 0 0	0 0 0	0 0 0
Paid for oath of due receipt of answer	0 0 0	0 0 0	0 0 0
Term fee for every term business is done	0 0 0	0 6 8	0 10 0

0 0 0 0 0 0 0  
0 0 1 0 0 1 0 0 1

Agreement

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*Agreement made rule of court.*

A GREEMENTS are frequently signed by the parties, their clerk in court and solicitor, and afterwards desired to be made an order of court: The court generally asks what they are for, and whether no infant or feme covert in the case; for if there be, the court cannot make the agreement of the parties an order of court, because no infant or feme covert can be bound thereby.

And it were to be wished this question were to be asked of the counsel, when motions are consented to in open court, and many a plaintiff is caught even at the hearing of the cause, where an infant is defendant, and admits the equity of his bill by the answer: For notwithstanding such admission, yet the plaintiff must prove every thing against the infant, as if his whole equity had been denied. Because an infant is incapable of admitting any thing whatsoever to his prejudice; and the court is bound *de debito justitiae* to take care of all infants who come before them, because they are not able to help themselves, or look after their own, as men of full age are.

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## C H A P. VIII.

### Bills and answers.

*A bill to prove a will against the heir at law:*

*To the Right Honourable Lord High Chancellor  
of Great Britain.*

HUMBLY complaining sheweth unto your Lordship, your orator G. S. of W. in the parish of B. in the county of D. an infant under the age

## Bills and Answers.

age of twenty-one years, by M. S. widow, his mother and next friend, That J. S. of W., aforesaid, your orator's late father deceased, being in his life-time and at the time of his death seised, possessed of, and interested in a very considerable estate both real and personal; and being minded to settle and dispose of the same, did on or about the fifth day of March which was in the year of our Lord 1727, (being of sound and disposing mind, memory and understanding,) duly make and publish his last will in writing in the words and figures following, that is to say, In the name of God, Amen, &c. [Here set forth the will verbatim.] In witness, &c. J. S. Signed, sealed, published and declared, &c. G. H. J. K. L. M. Which said will was duly signed, sealed, published and declared by your orator's said father in the presence of the persons whose names are subscribed to the said will as witnesses to the same, as in and by the said will, relation being thereunto had, it doth and may more fully appear. And your orator further sheweth unto your Lordship, that shortly after making the said will, to wit, on the ——day of ——the said J. S. departed this life, without revoking or making any alteration of the same, so seised and possessed as aforesaid, leaving J. S. of F. in the said county of D. his only son and heir at law; but the said J. S. having duly made and published his last will and testament in manner aforesaid, your orator well hoped he should have quietly and peaceably held and enjoyed the same messuage, farm and lands according to the directions of the said will, as in all justice and equity he ought to have done. But now so it is, may it please your Lordship, that the said J. S. your orator's brother and heir at law of the said J. S. deceased, in order to defeat and defraud your orator of the benefit of his said father's will, and the promises thereby to him devised, doth sometimes

pretend,

pretend, that your orator's said father the said J. S. never made and published such last will and testament as aforesaid; or that if he did, he was only tenant for life of the said premisses so devised to your orator, and therefore had no power to dispose of the same, or that he was not of sound and disposing mind, memory and understanding at the time of his making his said will as aforesaid, and therefore pretends your orator ought not to hold the same under the said will. And at other times your orator's said brother pretends, that in case his father was of sound and disposing mind when he made, published and declared his said will, yet the witnesses did not subscribe their names as witnesses thereunto in his presence, and so the said will is void, and that he the said J. S. as heir at law to his said father, hath a good right and title to the said premisses; or that if they did, then he threatens that when the witnesses to the said will are dead, he will contest the same and the validity thereof, and set up his title as heir at law to the said devised premisses, by means whereof your orator cannot dispose of the said premisses devised to him as aforesaid, nor be quieted in the present possession thereof; All which pretences of the said J. S. and his confederates are contrary to equity and good conscience, and tend to injure and oppress your orator. In tender consideration whereof, and forasmuch as your orator cannot examine his witnesses, who are aged and infirm, and not likely to live long, or have their testimony preserved in proof of the said will, without the aid and assistance of this honourable court; To the end therefore that the said J. S. your orator's said brother, may true answer make to all and singular the premisses as fully and particularly as if the same were again repeated and interrogated, and may set forth whether your orator's father was not in his se-time, and at the time of his death, seized of the premisses

premisses before-mentioned, and what estate he had therein, and whether he did not, and when make such will as aforesaid, and may set forth whether he was not of sound and disposing mind, memory and understanding at the time of his making and publishing thereof, and whether he had not power to dispose and make such devise of the said premisses in manner aforesaid ; and may also set forth what title or interest he your orator's said brother claims to or in the same, and that your orator may have his witness to the said will examined, and their testimony recorded in this honourable court, in order to the perpetuating thereof, so that your orator may have the benefit thereof at any time when there shall be occasion ; May it please your Lordship to grant unto your orator his Majesty's most gracious writ of *subp<sup>na</sup>* to be directed to the said J. S. thereby commanding him at a certain day, and under a certain pain therein to be inserted, personally to be and appear before your Lordship in this honourable court, then and there to answer the premisses, and to stand to and abide such order and decree therein, as to your Lordship shall seem agreeable to equity and good conscience.

*And your orator shall ever pray, &c.*

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*The answer to the foregoing bill.*

*The answer of J. S. an infant under the age of twenty-one years, by W. M. his guardian, defendant, to the bill of complaint of G. S. an infant, by his next friend M. S. widow, complainant.*

**T**H E said defendant, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception

to the manifold uncertainties and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much thereof as materially concerns this defendant to make answer unto, he answereth and saith, That he believeth it to be true, that J. S. in the bill named, father of him this defendant and the complainant, was in his life-time, and at the time of his decease, seised of the premisses in the bill mentioned to be devised to the complainant; and doth also believe, that the said J. S. being so thereof seised, did about the time for that purpose in the bill mentioned make and duly publish his last will and testament in writing, whereby he devised the said premisses to the complainant as in and by the said bill of complaint is set forth and alledged, and that he had power to dispose of the same, and was of sound mind, memory and understanding at the time of his making thereof; but this defendant doth not know the same of his own knowledge, and therefore hopeth that the complainant shall be compelled to make due proof thereof before he shall be let into any benefit by the said will; and the rather, for that in case this defendant's said father had not made such will, and thereby such disposition of the premisses as in the bill is set forth, he this defendant, as he is advised, had been well intitled to the same as heir at law to his said father: And this defendant saith, that he being but an infant, and not capable of judging of the matters in the complainant's said bill contained, humbly hopes this court will take care of him and his interest in the said premisses, in case it shall appear he hath any therein: And this defendant further answering, denies that he ever gave out in speeches, that his said father had no right or power of disposing of the said premisses, or that he made no such will as in bill, or that in case he made any

such will, yet that he was not of sound and disposing mind, memory and understanding when he made the same, as in the bill is untruly suggested: And this defendant denies all and all manner of combination and confederacy wherewith he stands charged in and by the said bill of complaint; Without that, that there is any other matter or thing material or necessary for this defendant to make answer unto, and not herein, and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true: All which matters and things this defendant is ready to aver and prove, as this honourable court shall direct and award, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.  
 [Vide post interrogatories for proof of the will page .]

*A bill of the like kind as the former (Vide chap. p. ) with an answer, insisting that the testatrix was a papist.*

HUMBLY complaining, shew unto your Lordship, your orators and oratrix T. C. late of \_\_\_\_\_ in the county of \_\_\_\_\_, and E. P. commonly called P. of \_\_\_\_\_ in the county of \_\_\_\_\_, gent. D. T. of \_\_\_\_\_ in the county of \_\_\_\_\_, spinster, R. C. of \_\_\_\_\_ in the said county of \_\_\_\_\_, gent. and H. B. of \_\_\_\_\_ in the county of \_\_\_\_\_, gent. That J. D. late of the parish of \_\_\_\_\_ in the said county of \_\_\_\_\_, widow, late the relict of G. W. late of \_\_\_\_\_ in the county of \_\_\_\_\_, gent. deceased, and one of the daughters of C. T. late of \_\_\_\_\_, Esq; deceased, who was son and heir of E. T. the younger, late of \_\_\_\_\_ knight, also deceased, being in her life-time, and at the time of her death, seised of the reversion and inherit-

inheritance in fee, (or of some other good estate of inheritance expectant upon the death of *E. T. Esq;* whereby she had power to dispose of the same;) of and in divers manors, messuages, lands, tenements and hereditaments in the counties of — and —, and elsewhere; and being minded and desirous to dispose of the same in such manner and sort, that no disputes might arise after her death, touching any claim that might be made thereunto, or to any part thereof after her death; and being of sound and disposing mind, memory and understanding, did, on or about the — day of — in the year —, duly make and publish her last will and testament in writing, and signed the same in the presence of three credible witnesses, who in her presence subscribed and attested the same in such manner and form as the law requires in cases of devises of lands and tenements and real estates, which last will and testament is in the words following. In the name of God, Amen. I *I. D.* of —, widow, do make and ordain this my last will and testament in manner and form following: *Item*, I give and devise unto my loving friend *E. P.* of — in the county of —, gent. and *T. C.* of — in the county of —, all my estate, &c. [Here set forth the words of the will.] In witness whereof I have hereunto set my hand and seal this — day of —, in the year of our Lord —. *J. D.* Signed, sealed, published and declared by the said testatrix as her last will and testament in the presence of us, and attested by us in her presence, *T. H. J. B. T. R.* And your orators and oratrix further shew unto your Lordship, that the said *J. D.* soon after making and publishing of her said will, (*to wit,*) on or about the third day of July last, departed this life without revoking or altering her said will, leaving *S. the wife of J. G. of W.* — in

the county of —, gent. (a defendant herein after named,) her heir at law; And your orators F. C. and E. P. proved the said will, and took upon themselves the burthen and execution thereof; and your orators and oratrix well hoped that no disputes would have arisen touching the said disposition made by the said J. D. of her real estate as aforesaid, or of her power in so doing, or touching or concerning any claim or demand upon her said estate or any part thereof. But now so it is, may it please your Lordship, that the said J. G. and S. his wife, combining and confederating to and with divers persons at present unknown to your orators and oratrix, whose names, when discovered, your orators and oratrix pray may be herein inserted, with apt words to charge them, and each and every of them, how to injure and prevent your orators and oratrix in the devises made them respectively in and by the said will of the said J. D. sometimes pretend that the said J. did not make and publish such will of such date, and to such purport and effect as is herein before set forth, or if she did, yet that the same was not so made, executed and attested, as the law requires in case of a will for passing of real estates, or if so, that the said J. D. was not of sound and disposing mind, memory and understanding at the time of making such will, or if she was of sound and disposing mind, memory and understanding at the time of making thereof, that she had not power to devise the same in the manner she has done in and by her said will; whereas your orators and oratrix expressly charge, and so the said confederates well know in their conscience the truth to be, that the said J. D. was, at the time of making her said last will and testament, of sound and disposing mind, memory and understanding, and had good and absolute power to make such disposition and devises as she hath done therein and thereby, and that

that she did accordingly make and publish her said will in such manner and form as the law requires in cases of devises of real estates; and therefore the said confederates, to defeat your orators and oratrix of the devises and estates therein given and made to them, decline contesting the said will, or the validity thereof, during the lives of the witnesses thereto, but give out, that when the witnesses to the said will are dead, they will call in question the validity thereof; To avoid which, and that the testimony of the witnesses to the said will may be perpetuated, And to the end that the said confederates may, upon their several and respective corporal oaths, full, true and perfect answer make, to all and singular the premisses, as fully and particularly as if the same were here again repeated, and they thereto interrogated; and more especially that they may set forth and discover whether they do not know, have heard or been informed, and in their consciences believe, that the said J. D. did make and publish her last will and testament, of such date, purport and effect as herein before for that purpose is set forth, or of any other, and what date, purport and effect; and whether the said J. D. was not of sound and disposing mind, memory and understanding at the time of making and publishing of the said last will and testament herein before set forth, and whether the same was not duly published in the presence of such three witnesses, and by them attested in the presence of the said testatrix, as mentioned in the said will and herein before set forth, and as the law directs in case of devises of real estates; and whether the said testatrix had not power to make such devisees of her real estate as in and by the last will and testament she has done, and why, and for what reason she had not power so to do; and whether the said testatrix J. D. did not depart this life at or about the time herein before for that purpose

purpose mentioned, or at any other, and what time; and may set forth whether they do or do not contest the said will, or the validity thereof; and that your orators and oratrix may be at liberty to examine their witnesses to the said will, in order to perpetuate their testimony thereto; May it please your Lordship, &c.

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*The answer of J. G. and S. his wife, defendants, to the amended bill of complaint of T. C. and E. P. otherwise P. gent. and D. T. widow, and others, complainants.*

THE said defendants now, and at all times hereafter, saving, &c. they answer and say: They admit that the defendant *S.* is heir at law of *J. D.* in the complainant's said bill named; and these defendants have heard, that, by virtue of or under some limitation or devise in the will of Sir *E. T.* late of —— in the county of ——, grandfather of this defendant *S. G.* bearing date on or about the —— day of ——, several manors, messuages, lands, tenements and hereditaments in the counties of —— and ——, or the reversion or inheritance thereof, were limited by the said Sir *E. T.* to his nephew *E. T.* for life, remainder to trustees to preserve several contingent remainders and estates therein mentioned; and these defendants have heard, and believe it to be true, that a remainder in the said premises was by the said will limited, after several intermediate estates, to the daughter and daughters of *M. T.* one of the daughters of the said Sir *E. E.* and to the daughter and daughters of *C. T.* the father of the said *J.* and to

the heirs of all and every such daughter and daughters of the said *M. T.* and *C. T.* To hold as tenants in common, and not as joint-tenants; but as touching the will of the said Sir *E. T.* and the limitations in the said will, these defendants, for more certainty, refer thereunto, when the same shall be produced to this honourable court: But these defendants say, that in case the said Sir *E. T.* duly made such will as aforesaid, that the said *J. D.* at the time of making thereof was a papist, and professed the popish religion, as these defendants do believe and insist, and believe and insist that she continued to be a papist, and to profess the popish religion from that time until the time of her death, and by means thereof was, as these defendants are advised and insist, by the statute made in the 11th and 12th years of the reign of king *William III.* intitled, *An act for the further preventing the growth of popery*, disabled and made incapable to purchase, either in her own name, or in the name of any other person or persons to her own use, or in trust for her, any manors, lands, profits out of the lands, tenements, rents, farms or hereditaments within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*: And these defendants say, that the said *E. T.* the nephew was a protestant, and survived the said *J. D.* and that this defendant *S.* is heir at law to the said Sir *E. T.* And these defendants do believe, and admit it to be true, that the said *J.* was the only surviving daughter of the said *C. T.* and that the said *M. T.* died without issue and unmarried; but whether the said *J.* made such will as in the complainant's bill is mentioned and set forth, or whether she was of sound memory and understanding at the time of making such will, or whether the same was so made, published and attested, as in the complainant's bill is set forth, or as the law requires in case of devises of land, or in any and what other manner or form, these

these defendants know not, nor can set forth, nor have been informed thereof, save by the said bill. And these defendants say, the complainant *E. P.*, and also *D. T.* in the bill named, are persons that were educated in the popish religion, and professing the same since the tenth day of *April* in the year of our Lord 1700. and that at the time of making the will of the said *J. D.* in the bill for that purpose mentioned, if any such she made, and also at the time of her death, they the said *E. P.* and *D. T.* and each of them, were papists and professed the popish religion, and that they and each of them have continued papists, and to profess the popish religion ever since the death of the said *J. D.* and that they now are papists, and do profess the popish religion, and are, as these defendants are advised and insist, by the aforesaid statute made in the 11th and 12th years of the reign of king *William III.* intituled, *An act for the further preventing the growth of popery*, disabled and made incapable to purchase, either in their own names, or in the name of any other person or persons, to their use, or in trust for them, any manors, lands, profits out of lands, tenements, rents, farms or hereditaments within the kingdom of *England*, dominion of *Wales* and town of *Berwick upon Tweed*; and these defendants say, that they are advised, and humbly insist, that in and by the same statute, all and singular estates, terms, or any other interest or profits whatsoever out of the lands, from and after the said tenth day of *April* aforesaid in the said year of our Lord 1700 aforesaid, to be made, suffered or done, to or for the use or benefit of any papist or person making profession of the popish religion, or upon any trust or confidence mediately or immediately, to or for the benefit or relief of any such person or persons, is utterly void, and of none effect, to all intents, constructions or purposes whatsoever; And these defendants,

each

each speaking for themselves, say they are protestants, and claim the benefit of the aforesaid act of Parliament or statute, and are advised, and humbly insist, that the said will of the said J. D. in the complainant's bill of complaint for that purpose mentioned, if any such she made, so far as the same extends mediately or immediately to or for the benefit of the said E. P. or D. T. or either of them, is utterly void and of none effect, to all intents, constructions or purposes whatsoever; and that these defendants, in right of this defendant S. as the said S. is heir at law to the said J. D. are intitled to all the real estate of the said J. D. in possession or reversion which was not sufficiently devised by her said will, if any such she made. And these defendants further say, that the said J. D. at the time of making her last will and testament, if any such she made, and at the time of her death, was a papist, and professed the popish religion, and these defendants are advised, and humbly insist, that, according to the laws and statutes of this realm now in force, the trusts created by the will of the said J. D. ought not to be performed and executed as therein is mentioned; and these defendants say, they believe the said J. D. died about the — day of —, and deny all and all manner of unjust and unlawful combination to the intent in the bill charged; without that, that, &c.

*A bill against an executor for an account, &c.*

HUMBLY complaining, shew unto your Lordship, your orator and oratrix, J. K. of — in the county of —, Esq; and M. his wife, which said M. is the daughter and surviving devisee under the last will and testament of B. A. late of — in the county of —, deceased, and also the only

only sister and heir at law of *B. A.* the younger, late of —— aforesaid, deceased, son of the said *B. A.* That the said *B. A.* the father, being seized and possessed of a considerable real and personal estate, duly made and published his last will and testament in writing, bearing date on or about the — day of — 1725. and thereby gave to his wife (your oratrix's mother) the sum of two hundred pounds, to be paid her within one year next after his decease; and devised to his son *B. A.* your oratrix's brother, all that his farm and lands called —, situate in the parish of — in the said county of — To hold to the said *B. A.* the son, his heirs and assigns for ever; and did thereby give and devise unto the said *B. A.* the son, and to your oratrix his daughter, all other his real and personal estate, of what kind or quality soever, (except his household goods and plate,) which he gave to his said wife *C.* (your oratrix's mother) during her natural life; and after her death he gave the said household goods and plate to your oratrix, her executors and administrators, To hold the said personal and real estate (except as before excepted) unto his said son the said *B. A.* and your oratrix, their heirs, executors and administrators for ever, subject to the payment of a legacy of ten pounds, to *J. A.* (one of the brothers of the said *B. A.* the testator,) and also to the payment of a legacy of twenty pounds to *R. A.* another brother of the said *B. A.* the testator, and a guinea to his nephew *J. W.* to be paid them severally within one year next after his death; and the said *B. A.* did in and by his said will desire, that his said wife might have the care and bringing up of his said children the said *B. A.* and your oratrix during their minority, so long as she should continue a widow; but in case she should intermarry with any other person after his death, then he willed that his executors might have the care and bringing

up of his said children, and might receive the rents  
and interest money of his real and personal estate  
for that purpose; and of his said will he the said  
testator did nominate and appoint his said brother  
*J. A.* and *J. T.* executors. And your orator and  
oratrix further shew unto your Lordship, that the  
said *B. A.* your oratrix's father, departed this life  
on or about the —— day of —— 1729, without  
altering or revoking the said will; and upon his  
death the said *J. A.* proved the said will in the pre-  
rogative court of the Archbishop of Canterbury;  
and the said *J. T.* refusing to act under the said  
will, the said *J. A.* took upon himself the burthen  
and execution thereof, and by virtue thereof posse-  
sed himself of all the personal estate of the said *B. A.*  
to the amount of —— and upwards, in trust for  
the said *B. A.* the son and your oratrix, during their  
minority; and the said *J. A.* also took possession,  
and received the rents and profits of the real estate  
of the said testator devised by his said will, in trust  
so for the said *B. A.* the son, and your oratrix;  
and your orator and oratrix further shew unto your  
Lordship, that your oratrix's mother the said *C.*  
continued the care and bringing up of your oratrix  
and the said *B. A.* her brother, from the death of  
your oratrix's father the said *B. A.* the testator, till  
about a month of —— 1730. at which time  
she intermarried with one *H. C.* and immediately  
after her marriage with the said *H. C.* the said *J. A.*  
alone took care of the education and mainten-  
ance, and had the bringing up of your oratrix and  
her said brother *B. A.* And your orator and ora-  
trix further shew unto your Lordship, that the said  
*J. A.* your oratrix's brother departed this life dur-  
ing his infancy, *so wit*, in or about the month of  
— 1731, intestate; and upon his death, your  
oratrix, as his only sister and heir at law, became  
entitled to the said real estate called ——, devised

to him by the will of the said *B. A.* the testator, and also to the moiety or half part of all other the real and personal estate of the said *B. A.* the testator, devised to the said *B. A.* your oratrix's brother in and by the said will: And your orator and oratrix further shew unto your Lordship, that the said *J. T.* refusing to act in the said executorship, the said *J. A.* alone acted under the trust mentioned in the said will, and possessed himself of all the said testator's personal estate, to the amount of — and upwards, and hath received the rents, issues and profits of the real estate devised to the said *B. A.* your oratrix's brother (since deceased) and your oratrix as aforesaid, ever since the death of the said *B. A.* the testator, and now continues to receive the same: And your orator and oratrix further shew unto your Lordship, that in or about the month of — last past, your orator and oratrix intermarried; whereby your orator, in right of your oratrix his wife, is become intitled to the real and personal estates of the said *B. A.* the testator, subject to the legacies in the said will mentioned; and your orator and oratrix have since their intermarriage often applied to the said *J. A.* in a friendly manner, and desired him to give your orator an account of the personal estate of the said testator, and of what the same consisted, and also an account of the rents, issues and profits of his real estate, and to know how and in what manner the same have been paid and applied, and how much thereof remains in his hands, and that he might pay to your orator and oratrix what, upon the ballance of such account, should appear to be due to them, in right of your oratrix, and assign over unto your orator such part of the testator's personal estate, as consists in mortgages, bonds, or other securities; and to be let into possession of the real estate of the said *B. A.* the testator in right of your oratrix his wife, as surviving devisee

devisee under the will of the said testator, and as heir at law of her brother the said *B. A.* and your orator and oratrix well hoped the said *J. A.* would have complied with such their reasonable requests, as in justice and equity he ought to have done. But now so it is, may it please your Lordship, that the said *J. A.* combining and confederating himself to and with the said *J. C.* and *C.* his wife, and to and with divers other persons at present unknown to your orator and oratrix, whose names, when discovered, your orator and oratrix pray may be inserted herein, with apt words to charge them, contriving how to defraud your orator and oratrix, and to defeat your oratrix of the benefit intended by the devise in the said will, he the said *J. A.* her uncle, refuses to give or render to your orator and oratrix, any account whatsoever of the said testator's personal estate, or of the rents, issues and profits of the said real estate, and to pay what is due to your orator in right of your oratrix, or to let your orator into possession of the said real estate; the said *J. A.* sometimes pretending, that the personal estate of the said *B. A.* the testator, was very small and inconsiderable in value, and not sufficient to pay the debts, legacies, and funeral expences of the said testator; whereas your orator and oratrix charge, and so the truth is, that the said testator died possessed of a considerable personal estate, much more than sufficient to pay all his just debts, legacies and funeral expences, with a great overplus; your orator and oratrix charging, that the said *J. A.* hath, out of the monies arising from the personal estate of the said testator, paid all the testator's debts, legacies and funeral expences, and after payment thereof, having a great overplus in his hands, did lend out to several persons on mortgages, bonds and other securities, several large sums of money, and hath received the interest thereof, and applied the

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same to his own use; and at other times the said J. A. pretends, that the rents, issues and profits of the real estate devised by the said testator, are so small, that they will not amount to, or be sufficient to reimburse and satisfy him for the charges and expences he hath been at in the maintenance and education of the said B. A. the son and your oratrix, but that there will be a considerable sum due to him on the balance of accounts for such maintenance and education: Whereas your orator and oratrix do charge, that the real estate devised by the testator to his son B. A. was and is of the yearly value of — and upwards, and that the real estate devised by the said testator to the said B. A. his son and your oratrix, was and is of the yearly value of — and upwards, amounting together to — a year and upwards; and your orator and oratrix do charge, and doubt not but to prove, that the said J. A. expended and laid out but very little thereof for the maintenance and education of your oratrix and her said brother B. A. the manner of their education being very private and no way expensive; and at other times the said J. A. pretends, that the said J. T. the other executor named in the will of the said testator, or the said C. your oratrix's mother, possessed themselves of all, or greatest part of the personal estate of the said testator, and that they, or one of them, received the rents, issues and profits of the real estate ever since the testator's death, and that he the said J. A. did not intermeddle therewith; and at other times the said J. A. doth acknowledge and confess, that he has been, and is the only acting executor under the said testator's will, and that he hath received all the said testator's personal estate to a considerable value, and that he hath also received the rents, issues and profits of the said real estates devised by the said testator as aforesaid; but then the said J. A. pretends, that he did lend out all, or a great part thereof, to divers persons

at interest on mortgages, bonds, notes and other securities, intending the same for the benefit of your oratrix, but that such persons have failed in the world and become insolvent, so that the money lent to them, or the most of them, cannot now be got in or recovered; and the said *J. A.* pretends, as he intended the benefit of your oratrix in lending out the said trust-money, he is not, nor ought to be, accountable for any losses that have happened, or shall hereafter happen on that account; more especially, as the person or persons to whom he so lent the same, was and were, at the time of his so lending the same, in very good circumstances, and reputed to be very rich; but how much of the trust-money, or to whom, or when, or upon what securities the same was so lent, he the said *J. A.* refuses to discover; All which actings and doings of the said *J. A.* and the other confederates, are contrary to right, equity and good conscience, and tend to the great injury of your orator and oratrix. In **consideration** whereof, and forasmuch as matters of this nature are most properly cognizable and relievable in a court of equity before your Lordship, and in regard your orator and oratrix cannot compel the said *J. A.* to account for the said testator's personal estate, and the rents and profits of his real estate, or the payment of what is justly due and owing to your orator and oratrix under the will of the said testator, but by the aid and assistance of a court of equity: To the end therefore that the said *J. A. H. C.* and *C.* his wife, may upon their several corporal oaths, true and perfect answer make to all and singular the premisses, as fully and particularly as if the same were here again repeated and interrogated, and that the said *J. A.* may set forth, whether the said *B. A.* your oratrix's father, did not make such last will and testament as herein before set forth, or any other, and what will; and whether

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ther the said *B. A.* the testator, did not depart this life on or about — day of — 1729, without altering or revoking the said will; and whether upon his death the said *J. A.* alone did not prove the same in the prerogative court of *Canterbury*, or in any other, and what ecclesiastical court; and whether the said *J. A.* did not, by virtue thereof, receive and get into his hands, the custody possession or power, of all, or such part of the testator's personal estate as he could come by; and that the said *J. A.* may set forth a true and perfect account of all and singular the personal estate of the said testator which he died possessed of, or intitled unto, and the natures, kinds, quantities and qualities thereof, and in what the same consisted, and how much, and what part thereof, came to the hands of the said *J. A.* or to the hands, custody, power or possession of any other person or persons for his use, and how and in what manner the same has been paid, applied, or disposed of, and how much and what part thereof remains unpaid or undisposed of, and where, and in whose hands, custody or power, all or any part thereof now is or are; and whether the said *J. A.* or who else on the death of the said testator, did enter upon and take possession of the real estate which the said testator died feised of, and received the rents, issues and profits thereof; and that the said confederates may set forth a just and true rental or particular of the said real estate, and where the same lieth and is situate, and by whom occupied or tenanted, and the yearly and other value thereof, as well of such part of the said real estate devised by the said testator to his son *B. A.* and his heirs, as that part thereof devised to the said *B. A.* the son, and your oratrix, and their heirs, and may set forth who hath or have received the rents, issues and profits thereof since the testator's death, and how the same hath

hath been applied and disposed of, and to whom and when, and who now is or are in the perception of the said rents, issues and profits thereof; and that the said confederates may answer and set forth by whom, and in what manner the said *B. A.* the son and your oratrix were maintained and educated, and who hath had the care and bringing them up since the testator's death, to the time of the death of the said *B. A.* the son, and from that time to the time of the intermarriage of your orator and oratrix, and may set forth how much yearly, and otherwise, hath been paid, laid out and expended for such maintenance and education; and may set forth whether the said *C.* your oratrix's said mother did not, on or about the time herein before for that purpose mentioned, intermarry with the said *H. C.* and whether *B. A.* the son, did not depart this life in his infancy, about the month of ——  
1731, and whether upon his death your oratrix, as his only sister and heir at law, did not become, and is not well intitled to, such part of the said testator's real estate, as was devised by the said testator to the said *B. A.* the son, and his heirs, and also to the moiety or half part of all other the testator's real estate, devised by him the said *B. A.* the son jointly with your oratrix; and that the said *J. T.* may also set forth, whether the said *J. T.* as one of the executors under the said will, or otherwise, to his knowledge or belief, ever received any, and what part of the personal estate, or the rents and profits of the real estate of the said testator, or whether the said *J. T.* as one of the executors under the said will, or otherwise, to his knowledge or belief, ever received any, or what part of the personal estate, or the rents and profits of the real estate of the said testator, or whether the said *J. T.* did not absolutely refuse to act therein, and leave the whole management and care thereof to him the said *J. A.* and whether the said *J. A.* did not accordingly alone act un-

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der the said will, and possess himself of all the said testator's personal estate, and enter upon and take possession of all the testator's real estate, and receive the rents, issues and profits thereof; and that the said confederates may answer and set forth, whether your orator and oratrix did not intermarry in or about the month of —— last past, and whether they have not many times, and when, since their intermarriage, both by themselves and friends, applied to the said J. A. to have an account of the personal estate, and the rents and profits of the real estate of the said testator, and to be paid what, upon such account, should appear to be due and owing to your orator in right of your oratrix; and whether the said J. A. did not, and for what reason, refuse to give or render such account, or to pay your orator and oratrix any money on account thereof, or what did the said J. A. say or declare when such application was made to him by or on the behalf of your orator and oratrix; and that the said C. may set forth, whether she hath received her legacy of two hundred pounds, given her by the will of the said testator, and when, and from whom, she so received the same; and that the said H. C. and C. may set forth, whether they, or either, and which of them, have received any, and what part of the said testator's personal estate, or the rents, issues and profits of the said testator's real estate; and that the said J. A. may answer and set forth, whether he did at any time, and when, lend to any, and what person or persons, and to whom by name, any, and what part of the said trust-money, at interest, arising from the personal estate, or the rents and profits of the real estate of the said testator, upon any, and what securities; and may set forth, how much he hath received from time to time as interest thereon, and whether the security or securities he took for the money he so lent, is, or are good and sufficient securities for

for the money he so lent, or whether the same are not very insufficient, uncertain and precarious; and whether the monies so lent by him on such securities, is not, or are likely to be lost, by the scantiness of the said securities, or by the deaths or insolvencies of the persons to whom the same were lent; and that the said *J. A.* may be decreed to come to a just and fair account with your orator and oratrix for the personal estate of the said testator, and for the rents, issues and profits of the said real estate devised by the said testator to the said *B. A.* the son, and to your oratrix, which hath come to his hands, custody, possession or power, or which hath been received by him, or any other person or persons by his order, and for his use; and that he may pay to your orator and oratrix what, upon such account, shall appear to be due to them; and that the said *J. A.* may assign over, and deliver to your orator and oratrix, all such securities which hath, or have been entered into and given for such part of the trust-money as hath been lent out by the said *J. A.* or any other person or persons; and that your orator and oratrix may be let into possession of the said real estate whereof the said testator died seised; and that your orator and oratrix may have such further and other relief in the premisses, as to your Lordship shall seem meet. *May it please your Lordship, &c.*

*A bill brought by creditors for an account of testator's personal estate, and to be paid their debts.*

*To the Right Honourable, &c.*

**H**UMBLEY complaining, shew unto your Lordship, your orators and oratrixes *J. C.* of the parish of — in the county of —, gentleman,

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der the said will, and possess himself of all the said testator's personal estate, and enter upon and take possession of all the testator's real estate, and receive the rents, issues and profits thereof; and that the said confederates may answer and set forth, whether your orator and oratrix did not intermarry in or about the month of —— last past, and whether they have not many times, and when, since their intermarriage, both by themselves and friends, applied to the said J. A. to have an account of the personal estate, and the rents and profits of the real estate of the said testator, and to be paid what, upon such account, should appear to be due and owing to your orator in right of your oratrix; and whether the said J. A. did not, and for what reason, refuse to give or render such account, or to pay your orator and oratrix any money on account thereof, or what did the said J. A. say or declare when such application was made to him by or on the behalf of your orator and oratrix; and that the said C. may set forth, whether she hath received her legacy of two hundred pounds, given her by the will of the said testator, and when, and from whom, she so received the same; and that the said H. C. and C. may set forth, whether they, or either, and which of them, have received any, and what part of the said testator's personal estate, or the rents, issues and profits of the said testator's real estate; and that the said J. A. may answer and set forth, whether he did at any time, and when, lend to any, and what person or persons, and to whom by name, any, and what part of the said trust-money, at interest, arising from the personal estate, or the rents and profits of the real estate of the said testator, upon any, and what securities; and may set forth, how much he hath received from time to time as interest thereon, and whether the security or securities he took for the money he so lent, is, or are good and sufficient securities for

for the money he so lent, or whether the same are not very insufficient, uncertain and precarious; and whether the monies so lent by him on such securities, is not, or are likely to be lost, by the scantiness of the said securities, or by the deaths or insolvencies of the persons to whom the same were lent; and that the said *J. A.* may be decreed to come to a just and fair account with your orator and oratrix for the personal estate of the said testator, and for the rents, issues and profits of the said real estate devised by the said testator to the said *B. A.* the son, and to your oratrix, which hath come to his hands, custody, possession or power, or which hath been received by him, or any other person or persons by his order, and for his use; and that he may pay to your orator and oratrix what, upon such account, shall appear to be due to them; and that the said *J. A.* may assign over, and deliver to your orator and oratrix, all such securities which hath, or have been entered into and given for such part of the trust-money as hath been lent out by the said *J. A.* or any other person or persons; and that your orator and oratrix may be let into possession of the said real estate whereof the said testator died seised; and that your orator and oratrix may have such further and other relief in the premisses, as to your Lordship shall seem meet. *May it please your Lordship, &c.*

*A bill brought by creditors for an account of testator's personal estate, and to be paid their debts.*

*To the Right Honourable, &c.*

**H**UMBLY complaining, shew unto your Lordship, your orators and oratrixes *J. C.* of the parish of — in the county of —, gentleman,

man, S. G. of the same parish and county, spinster,  
S. B. of the same parish and county, woollen draper,  
A. W. of —— in the county of ——, butcher,  
T. W. of the same place, vintner, J. N. of the pa-  
rish of —— in the county of ——, innkeeper, and  
W. L. of —— in the county of ——, yeoman, cre-  
ditors of E. S. late of —— in the county of ——, esq;  
deceased, That the said E. S. in his life-time, and at  
the time of his decease, was justly indebted to your  
orators and oratrixes respectively in the several sums,  
and in such manner as herein after mentioned, that  
is to say, To your orator J. C. on a bond or obli-  
gation given by the said E. S. unto your said orator  
J. C. bearing date on or about the twentieth day of  
*January* which was in the year of our Lord one  
thousand seven hundred and sixty, of the penalty  
of 230 l. conditioned for the payment of one hun-  
dred and sixteen pounds four shillings, and interest,  
on the twenty-third day of *July* one thousand seven  
hundred and sixty-five; and the said E. S. having  
paid part thereof to your orator, there is now due to  
your orator the principal sum of forty-one pounds  
fourteen shillings, and no more, together with in-  
terest for the same, from the ninth day of *June* one  
thousand seven hundred and sixty-five; and the  
said E. S. was as aforesaid likewise indebted to your  
oratrix S. G. in another bond or obligation also  
given by him the said E. S. unto your said oratrix,  
bearing date on or about the twenty-seventh day of  
the same *January* which was in the year of our Lord  
one thousand seven hundred and sixty-four, of the  
penalty of fourteen hundred pounds, conditioned for  
the payment of seven hundred pounds, together with  
interest for the same, on the twenty-seventh day of  
*August* one thousand seven hundred and sixty-five,  
whereon the whole principal money still remained  
due, together with all interest for the same, from  
the said twenty-seventh day of *January* one thousand  
seven

seven hundred and sixty-four, and was also indebted to your oratrix, on simple contract, in the further sum of one hundred pounds and upwards, for monies lent and paid to and for the use of the said *E. S.* by your said oratrix: and the said *E. S.* was indebted to your orator *S. B.* in the sum of fifty pounds and upwards, for divers goods sold and delivered unto the said *E. S.* by your said orator, for which your said orator delivered him a bill in his life-time, and which yet remains unsatisfied and unpaid; To your oratrix *A. W.* in the sum of twenty-two pounds and upwards, for butchers meat sold and delivered unto him, and for the use of the said *E. S.* by your said oratrix, for which your oratrix also delivered him a bill in his life-time;—to your orator *T. W.* in the sum of twenty-four pounds, and upwards, for wine sold and delivered to him the said *E. S.* by your said orator, for which your orator also delivered him a bill in his life-time, and which remains unpaid and unsatisfied;—to your orator *J. N.* in the sum of ten pounds and upwards, for the stabling and keeping of a horse for the said *E. S.* for which your orator likewise delivered him a bill in his life-time, and is still unpaid and unsatisfied; and he was as aforesaid likewise indebted to your orator *W. L.* his late servant on a promissory note given by him unto your said orator, for the sum of twenty-five pounds twelve shillings, bearing date the eighteenth day of November one thousand seven hundred and sixty-four, which was for the balance of an account then stated between him and your said orator; besides which said several sums herein before mentioned to be due to your said orators and oratrixes respectively, he the said *E. S.* was justly indebted to several other persons in divers other sums of money at the time of his death, to a considerable amount or value in the whole, which have not since been satisfied: And your orators and oratrixes further shew unto your Lordship,

Lordship, that the said *E. S.* being thus indebted, and being possessed of a considerable personal estate, more than sufficient to satisfy all his just debts, the said *E. S.* departed this life on or about the — day of —, having first made his last will and testament in writing, bearing date on or about the first day of January which was in the year of our Lord one thousand seven hundred and fifty-eight, and thereby gave and bequeathed unto one *J. D.* by the name and description of Mrs. *D* —, daughter to Mr. *L* —, of — in the county of —, all his estate both personal and temporal, except some small legacies therein mentioned; and therein reciting, that he had two thousand seven hundred pounds in the hands of *W. T.* Esq; of — —, he gave and bequeathed the same to the said Mrs. *D.* for her own use and benefit, as therein is mentioned, being the only person that he esteemed and loved; and upon his decease, he having appointed no executor to his will, on or about the twenty-third day of November one thousand seven hundred and sixty-six, letters of administration with the will annexed, were granted out of the prerogative court of Canterbury to the said *J. D.* who thereupon possessed herself of all the said testator's personal estate, except a debt due from *T. F.* hereafter named as executor of his uncle *T. F.* who had received several considerable sums of money, as hereafter is mentioned, out of the rents and profits of the said *E. S.* or of his father's estate and otherwise, for which he was and is accountable to the said *E. S.* And your orators and oratrixes farther shew, that the said *J. D.* having possessed herself of the said testator's personal estate as aforesaid, your orators and oratrixes applied themselves in a fair and friendly manner to be paid their said respective debts out of the same, as in equity and justice she ought to have done. But now so it is, may it please your Lordship,

Lordship, that the said *J. D.* combining and confederating to and with the said *T. F.* of \_\_\_\_\_, who is nephew and executor of *T. F.* lately deceased, and to and with divers other persons at present unknown to your orators and oratrixes, whose names, when discovered, your orators and oratrixes pray may be parties hereto, with apt words to charge them, how to defeat and defraud your orators and oratrixes in the premisses, and the said *J. D.* being in low circumstances, your orators and oratrixes do charge, that she hath applied the said testator's personal estate which has come to her hands, or the greatest part thereof, to her own use, and has wasted the same, and neglects to pay any part thereof to your orators and oratrixes, or to any or either of them, towards their or any, or either of their said respective demands, and sometimes pretends, that the said *E. S.* did not make such last will and testament as hereinbefore is mentioned, and that administration with the will annexed, was not at or about the time hereinbefore for that purpose mentioned, or at any other time, granted to her out of the prerogative court of *Canterbury*, or out of any other ecclesiastical court; or if the same was so granted to her, that nevertheless she hath not, by virtue thereof, received any part of the said *E. S.*'s personal estate, at least not sufficient to pay your orators and oratrixes their said respective demands; and the said *J. D.* at other times pretends, that the said *E. S.* died possessed of little or no personal estate but what shall come from the hands of the said *T. F.* the nephew, as executor to the said *T. F.* his said uncle deceased, and that, until she shall receive what is due from him as aforesaid, she shall be incapable of paying your orators and oratrixes, or any or either of them, their said respective debts, or any part thereof; whereas she well knows, (as the truth is,) that she hath received very considerable assets from the estate of the said

said *E. S.* and more than sufficient to pay the whole of your orators and oratrixes demands, and particularly she has received from the said *W. T.* the said sum of two thousand seven hundred pounds, or some very great sum of money, and the said *J. D.* refuses to call the said *T. F.* to an account for a very large sum of money due from him relating thereto, which may prevent her accounting for the same, and deprive your orators and oratrixes of their said just demands; and at other times she the said *J. D.* threatens to call in the said debt, and to apply it to her own private use, and declares she will not pay your orators and oratrixes said several demands, although she well knows the same, and every of them, to be justly due to your orators and oratrixes as aforesaid; and the said *T. F.* pretends, that neither he nor his said uncle *T. F.* was or were at any time indebted to the said *E. S.* whereas the contrary does plainly appear by a report made by Master *K.* one of the Masters of this honourable court, in a cause depending in this honourable court, wherein *C. D.* and others were plaintiffs, and the said *T. F.* and others were defendants, or in some other cause wherein the said *T. F.* was party; and that there was due to the said *E. S.* the sum of two thousand one hundred and six pounds five shillings and nine-pence half-penny, and the further sum of two hundred and thirty-two pounds sixteen shillings and nine-pence, making together the sum of two thousand three hundred and thirty-nine pounds two shillings and six-pence half-penny, or some such sum of money, which remains yet unpaid and unsatisfied; or the said report is to that or some such effect, and which the said *T. F.* has admitted to be true; And your orators and oratrixes aver and expressly charge, as the truth really is, that the said *T. F.* now is indebted to his said estate in that or some greater sum of money, and has received from his said uncle's estate

more

more than sufficient to pay the said demand, though he sometimes denies the same; at other times he admits that he has received sufficient assets of his said uncle's to pay the said debts, but insists that he has paid the said *J. D.* all that was due to her said testator, and has a discharge or discharges for the same; whereas your orators and oratrixes insist, that the said *J. D.* has still a good subsisting demand on him for the same or some other very large sum of money due to her said testator; but the said *T. F.* insists, he is only accountable to her for any debt due to the said testator, and threatens to pay her the same; in which case your orators and oratrixes would have little hopes of relief from the needy and insolvent circumstances of the said *J. D.* who, as your orators and oratrixes charge, has but a small support, except only what she got or expects to receive from the estate of the said *E. S.* All which meetings and doings of them the said confederates are contrary to right, equity and good conscience, and tend to your orators and oratrixes their apparent wrong and injury. In tender consideration whereof, and forasmuch as your orators and oratrixes witnesses, who could prove the truth of all and singular the premisses aforesaid, are either dead or gone into parts beyond the seas, remote and unknown to your orators and oratrixes, they your said orators and oratrixes are only and properly relievble in a court of equity, where matters of fraud and discovery are most properly cognizable; To the end therefore, that the said *J. D.* *T. F.* and the rest of the confederates, when discovered, may upon their several and respective corporal oaths, true and perfect answer make to all and singular the premisses, as fully and particularly as if the same were herein again repeated, and interrogated, according to their said each of their knowledge, remembrance and belief, and more particularly, that the said *J. D.* may set

set forth and discover, whether the said *E. S.* did not make such last will and testament in writing, of such date, and to such purport and effect, as herein before for that purpose is mentioned, or any and what other will and testament and of what other date, and to what other purport or effect; and whether she the said *J. D.* did not take out letters of administration with the said will annexed, and had the same granted to her out of the prerogative court of *Canterbury*, or out of any and what other ecclesiastical court, at or about the time herein before for that purpose mentioned, or at what other time, and whether, on the having such administration granted to her, she did not possess herself of so much of the said testator's personal estate, as was sufficient to pay your orators and oratrixes said demands, or how much thereof, and particularly whether she did not receive of and from the said *W. T.* the sum of two thousand seven hundred pounds, or any and what other sum of money; and may set forth, whether she does not refuse to call the said *T. F.* to an account for what is due from him to the estate of the said *E. S.* and whether she has not come to some, and to what private agreement relating thereto; and whether she does not sometimes threaten to call in the same and apply it to her own private use; and whether she does not know or believe, that your orators and oratrixes said demands are just and fair demands, or which of them are not, and for what reason she believes the same; and that the said *T. F.* may set forth, whether his said uncle was not indebted to the said *E. S.* in a very large sum of money, and whether he the said *T. F.* hath not been lately reported debtor to the said estate in the said several sums of two thousand one hundred and six pounds five shillings and nine-pence half-penny, and two hundred and thirty-two pounds sixteen shillings and nine-pence, or what other sum or sums of mo-

ney; and may set forth what he knows or believes in his conscience is really due from him to the said J. D. as administratrix of the said E. S. and whether he has not sufficient assets of his said testator's to pay and satisfy the same; and that the said J. D. may set forth and discover, whether she hath not applied the assets come to her hands, or some and what part thereof, to her own use, and may admit assets sufficient to pay your orators and oratrixes their said respective demands, and that she may set forth a full, true, just and particular account of the said testator's personal estate, with the natures, quantities, qualities, and true and full values thereof, and what hath come to her hands, custody or power, or to the hands, custody or power of any other person or persons in trust for her, or to her use, to her knowledge and belief, or with her privity, consent or procurement; and how she or they have applied the same, and that the said J. D. may pay and satisfy your orators and oratrixes said demands; and that in the mean time the monies in the hands of the said T. F. or so much thereof as shall be sufficient to pay and satisfy your orators and oratrixes said respective demands, with costs of this suit, may be stayed in his hands by injunction of this honourable court; and that in case the said J. D. shall not pay and satisfy your orators and oratrixes their said several and respective demands, that then the said T. F. may be decreed to pay and satisfy the same unto your orators and oratrixes out of the monies remaining in his hands, belonging or relating to the said E. S.'s personal estate; and that your orators and oratrixes may have such other and further relief in the premises, as to your Lordship shall seem meet. May it please your Lordship, &c.

A bill

*A bill by husband and wife for a bond-debt to the wife, while sole, against the heir at law and widow, for an account and satisfaction out of the real and personal estate of the testator.*

*To the Right Honourable ——— Lord High Chancellor of Great-Britain.*

HUMBLY complaining, shew unto your Lordship, your orator and oratrix J. H. of K. in the county of C. yeoman, and J. his wife, That on or about the 13th day of February which was in the year of our Lord 1767, your said oratrix J. (before her intermarriage with your orator,) advanced and lent unto J. N. late of Orton in the county of C. joyner, (since deceased,) the sum of —— for securing the repayment whereof with interest, after the rate of ten-pence for every pound by the year, he the said J. N. did enter into one bond or writing obligatory, bearing date the said 13th day of February 1767, by which bond he the said J. N. by the name and description of J. N. &c. did acknowledge himself to be bound, and did bind himself, his heirs executors and administrators unto your oratrix then J. T. by the name and description of, &c. in the sum of —— of lawful money of Great-Britain, with condition thereunder written to be void upon payment of the said sum of —— with interest for the same as aforesaid, unto your oratrix by her then name of J. T. her executors, administrators or assigns, upon the 2d day of February the next ensuing, or else the said bond or obligation was to be and remain in full force and virtue, as by the said bond or writing obligatory under the hand and seal of the said J. N. bearing date as aforesaid, and ready,

ready to be produced to this honourable court (relation being thereto had) it doth and may more at large appear; And your orator and oratrix further shew unto your Lordship, that on or about the 17th Day of December last, (and before any part of the said principal monies and interest due on the said bond was paid off or discharged,) the said J. N. departed this life, leaving J. N. his eldest son and heir at law, and S. N. his widow, and at the time of his death was not only seised in fee simple of and in divers lands, messuages and tenements in the parish of O. and elsewhere in the said county of C. but likewise possessed, or otherwise well intitled unto a considerable personal estate, consisting of beds, bedding, bras, pewter, and all other sorts of household-stuff, corn, hay, horses, cows, oxen, sheep, and other live cattle, ploughs, carts, and other implements of husbandry, money due upon bonds, bills and other specialties, and other debts due upon simple contract and accounts; after whose death they the said J. N. his son, and S. N. his widow, did not only immediately enter upon all and every the messuages, lands, tenements and real estate (whereof the said J. N. deceased was seised of and intitled unto at the time of his death) but have also entered upon and possessed themselves of all the goods, chattels and personal estate which he the said J. N. the father died possessed of; and which were much more than sufficient not only to have paid your oratrix her just debt, but all other the debts owing by the said J. N. at the time of his decease; and your orator J. H. having on or about the 23d day of December last intermarried with your oratrix J. T. he thereby became well intitled (in your oratrix's right) to the said debt of —— and interest due upon the said bond, and hath therefore oftentimes in a friendly manner applied to the said J. N. and S. N. his mother, for payment of the said debt, which sometimes they promised to pay unto

your orator and oratrix, as in justice and equity they ought. But now so it is, may it please your Lordship, that the said J. N. and S. N. his mother, combining and confederating themselves together, and to and with divers persons as yet unknown to your orator and oratrix, whose names when discovered your orator and oratrix pray may be inserted in this their bill, with apt words to charge them as defendants, now to defraud and defeat your orator and oratrix of their said debt, they the said confederates do set up divers pretences to divide and swallow up all the real and personal estate of the said J. N. the father; and having got into their, or one of their hands and custody, all the deeds, evidences and writings relating to the said real and personal estate by combination between them, pretend that the said J. N. the father did on or before his marriage with the said S. his wife, by a settlement made in writing in consideration of the said marriage, and previous thereto, grant and convey all and singular the messuages, lands, tenements and hereditaments whereof he died seised or possessed, to the use of her the said S. for her life for her jointure, in case she should survive the said J. N. her husband, with remainder after their deaths to their first and all other their sons respectively in tail male, with covenants, that the same were free from all incumbrances; and it is also alledged, that there are several incumbrances by mortgage of the said premisses made by the said J. N. the father, precedent in point of time to the said marriage settlement, and that the said S. hath paid the principal debts out of her said late husband's personal assets which are come to her hands, and that she will take assignments of the said mortgages to herself, or some other in trust for her, to protect her jointure lands and the inheritance thereof settled, or pretended to be settled upon her as aforesaid;

and as being void and unavailing.

TUGY.

aforesaid; and the said J. N. the son doth pretend and give out in speeches, that his said father was not at the time of his death seised of or intitled unto any lands or real estate whatsoever; whereas he the said defendant doth very well know (and so must confess) that his said father did, but a short time before his death, purchase of J. B. Esq; or his trustees, lords of the manor of O. in the said county of C. several messuages and tenements, and also several parcels or shares of common ground improved and taken up from the moors and wastes of the said manor, containing at least 150 acres of ground worth at least fifteen pounds an acre to be sold, which are now descended and come unto the said J. N. his son as his heir at law, and ought (as your orator and oratrix are advised) to be applied towards payment of the debts of the said J. N. the father; yet the same lying in common and intermixed with the lands and grounds of divers other persons, the said J. N. the son refuses to discover or make known to your orator and oratrix how or by what marks or bounds the said lands are meared or marked out, or in what particular places the same lie; and your orator and oratrix do expressly charge, that the personal assets of the said J. N. deceased, which have come to the hands and possession of the said S. N. is of the value of — at the least, the particulars and true value whereof she refuseth to discover; and although your orator and oratrix have frequently applied to the said S. N. and J. N. her son, and desired an account of the real and personal estate left by her said husband, yet they do severally refuse to give your orator and oratrix any account thereof, or to make your orator and oratrix any satisfaction in the premisses, but instead thereof threaten to take all advantages which by the strict rules of law they are or shall be intitled unto, and thereby directly to deprive your orator and oratrix of all remedies

## Bills and Answers.

medies for recovering their said just debt. All which actings, doings and pretences of the said confederates, are not only contrary to all right, equity and good conscience, but tend to the great loss and damage of your orator and oratrix. In tender consideration whereof, and forasmuch as your orator and oratrix's witnessses, who would prove the truth of all and singular the premisses, are either dead or gone into places remote beyond the seas, far distant from and unknown to your orator and oratrix, who cannot expect to have the benefit of their testimonies; and forasmuch as your orator and oratrix have no relief in the premisses, save only by the favourable aid and assistance of this honourable court: To the end therefore, that the said S. N. and J. N. her son, and other the confederates, when discovered, may true and perfect answer make to all and singular the premisses aforesaid, and that as fully and particularly as if the same were here again repeated and interrogated, and more especially, that the said S. N. and J. N. her son, may answer and set forth, whether the said J. N. the father did not in his lifetime, and at or about the time herein before for that purpose mentioned, borrow and take up at interest of and from your oratrix the sum of — aforesaid, and whether he did not, for securing the repayment thereof with interest, as herein before is mentioned, make and execute such bond, and payable at such time as herein before is set forth, or give any other and what security for the same; and whether, before payment thereof, the said J. N. the elder did not depart this life seised, possessed or intitled unto such real and personal estate as aforesaid, or other and what real and personal estate and effects; and that the said S. N. may set forth a true and perfect inventory of all and singular the goods and chattels of the said J. N. her deceased husband, which is come to her hands, custody or power, or

to the hands, custody, power or possession of any other person or persons in trust for her, or by her privity, or to her belief, and the particulars whereof the same consisted, and the real and true value of each particular, not by appraisement only, but as each particular hath been sold at, and if not sold, as it is in truth worth to be sold, and at such rates, as (if your orator pleases) he may take the same; and also what debts were owing to the said J. N. deceased, at the time of his death, and by whom, and whether the same were debts due upon bonds, bills, or any and what other securities, or how otherwise due and owing, and whether she, or any by her order and privity, and who by name, have or hath received the same, or any and which of them, or any and what satisfaction for the same, and from whom and when, and what debts are yet standing out and unpaid, and from whom due, and upon account, and also what debts owing by her said husband have been paid or compounded by her or her order, and may set forth each particular payment by her made, and to whom, when, and upon what securities, or how otherwise due; and that the said confederates, and particularly the said J. N. may set forth and discover what messuages, lands or tenements his said father J. N. died seised or possessed of, or was intitled unto, and where the same lie, and more especially whether the said J. N. his father (or some or one of his ancestors, and under whom he claimed) did not shortly before his death, and when, purchase of J. B. herein before named, or his trustees, lords of the manor of O. aforesaid, one or more messuages and tenements, and several and how many acres or parcels of ground taken up from the moors and wastes of the laid manor, and where the same lie, and the particular yearly value of each parcel or estate, and how the same is measured out and bounded, and whether he hath, or claims to have, any right, title, interest, claim and demand unto

or out of the said premisses, and by what deeds or conveyances, and may set forth the dates, parties names and considerations therein contained, or the contents thereof; and that the said confederates may answer and set forth whether they do not know, or have heard and believe, that your orator intermarried with your oratrix in or about the month of December last, or at what other time; and that the said S. N. and J. N. her son may come to a just and fair account with your orator and oratrix, touching the real and personal estate and effects of the said J. N. deceased, and that your orator and oratrix may thereout be paid and satisfied all such monies as shall (on a fair and just account) appear to be justly due to them for principal and interest upon the said bond so given as aforesaid unto your oratrix, and that your orator and oratrix may be further and otherwise relieved in the premisses according to equity and good conscience; May it please your Lordship, &c.

*A bill brought by a creditor, as well on behalf of himself as other creditors who shall come in and contribute to the expence of the suit, to be paid debts, and for sale of the testator's real estate, in case his personal estate shall not be sufficient; and to perpetuate the testimony of witnesses.*

To the Right Honourable, &c.

**H**UMBLY complaining, sheweth unto you Lordship, your orator R. B. of B. &c. as well on the behalf of himself as other the creditor of B. A. late of, &c. deceased, who shall come in and contribute to the expence of this suit, that the

said *B. A.* being in his life-time, and at the time of his death, seised in fee of a considerable real estate, of which he had power to dispose, and also possessed of a considerable personal estate; and being so seised and possessed, he the said *B. A.* did duly make and publish his last will and testament in writing, bearing date on or about the nineteenth day of *January* which was in the year of our Lord 1758. in the presence of three credible witnesses, who also subscribed their names as witnesses thereto in the said testator's presence; and the said testator did therein and thereby give and devise to his son-in-law *W. S.* and to his grandson *B. J.* and their heirs, all and every his messuages, lands, tenements and hereditaments whatsoever; *In trust to sell and dispose of the same, and by the monies arising by such sale to pay all his just debts; and the overplus (if any) and also all his goods, chattels, rights, credits, and personal estate, he gave to the said *W. S.* and *B. J.* equally to be divided between them, and made them executors of his said will.* And your orator further sheweth, that the said testator, soon after making of his said will, departed this life (*so wit*) on or about the — day of — which was in the year of our Lord 17 — without altering or revoking the same, and the said executors, or one of them, duly proved the same, and undertook the burthen of the execution thereof, as by the said will and probate, relation being thereunto had, may more fully and at large appear: And your orator further sheweth unto your Lordship, that the said *B. A.* was indebted to your orator in the sum of forty pounds by note, of his hand bearing date on or about the twentieth day of *February*, 1756. whereby the said testator promised to pay your orator or his order the said sum of forty pounds, with lawful interest for the same, upon demand, for value received, as by the said promissory note

note under the hand of the said *B. A.* now in your orator's custody ready to be produced, and to which your orator craves leave to refer may appear. And the said testator was also indebted to several other persons in divers considerable sums of money. And your orator sheweth unto your Lordship, that upon the death of the said *B. A.* the said *W. S.* and *B. J.* by virtue of or under colour of the said will, entered into the receipts of the rents and profits of all the said real estate of the said *B. A.* and also possessed themselves of all the goods, chattels, rights, credits and personal estate of the said testator of a very considerable value, and much more than will be sufficient to pay and discharge all the just debts of the said testator; and your orator hath several times applied himself to the said *W. S.* and *B. J.* for a satisfaction of the said demand; But the said *W. S.* and *B. J.* combining and confederating to and with *W. J.*, and *E.* his wife (which said *E.* is only daughter and heir at law of the said testator) and to and with divers other persons at present unknown to your orator, whose names when discovered your orator prays may be made parties hereto, with apt words to charge them, give out and pretend, that they have several claims upon the said estates, by means whereof your orator is delayed and prevented from receiving his debt or any part thereof; and sometimes the said executors admit the said testator's personal estate will be sufficient to pay all his just debts, but insist that they have not been able to collect or get in the same, and therefore cannot give your orator any account thereof, or make him any satisfaction for his said debt; and at other times the said executors pretend that the said testator's personal estate is very small and inconsiderable, and is not near sufficient to pay his just debts; and the said *W. J.* and *E.* his wife do insist that the said testator's personal estate is more than sufficient to pay all his just debts, and  
therefor

therefore they insist that the said real estate ought not to be sold, and refuse to join in the sale of the said estate, pretending that the said will was not duly executed, and that therefore the same descended to the said *E. J.* as heir at law to the said testator, all which actings and doings of the said confederates are contrary to equity and good conscience, and tend to the great wrong and injury of your orator who is properly relieviable in this honourable court, To the end therefore, that the said *W. S. B. J.*, *J. W.* and *E.* his wife may true and perfect answer make to all and singular the matters and premisses as fully and particularly as if the same were here again repeated and interrogated, and particularly that they may set forth whether the said *B. A.* was not in his life-time, and at the time of his death, seized in fee or otherwise, of and in some good estate of inheritance of a considerable, or what real estate, and whereof he had a full power to dispose, and whether he the said testator did not make and duly execute such will, and of such date as herein before set forth, or any other and what will, and whether he was not of sound and disposing mind, memory and understanding, at the time of making and publishing his said last will, and whether the witnesses to the said will did not duly attest and subscribe their names as witnesses thereto in the presence of the said testator, and when he died; and that the said confederates may set forth, whether the said testator was not in his life-time, and at the time of his death, indebted to your orator in the manner herein before set forth, or in any other and what manner, as they know, have heard, or believe; and that the said executors may set forth, whether they, or either and which of them, have or hath, since the death of the said testator, proved the said will, and got into possession of all the personal estate of the said testator, and also entered upon the receipt of the rents

rents and profits of the real estate, and may either admit assets sufficient to pay the demands of your orator, or otherwise may set forth a true and particular account of the said testator's personal estate, and what the same did or doth consist of, with the true and real value thereof, and of every part thereof, and what part thereof hath come to the hands, custody or power of them the said confederates, or to the hands, custody or power of any other person or persons, and whom by them or by or with their or either of their order or privity, and for their or either of their use; and may set forth how and in what manner they have paid, applied or disposed of the same, and of every part thereof; and that the said confederates may likewise set forth a full, true and particular account of the said real estate so devised to be sold, and where the same lies, together with the names of the several persons in whose tenure the same now is, and ever since the death of the said testator hath been, together with the true and real annual rents and values thereof; and may set forth an account of the several sums of money which they or any other person or persons, and who for their or either of their use, have or hath received out of, or by the rents and profits of the said real estates since the death of the said testator; and that the said confederates may set forth what right, title, interest, property, claim or demand they or any, and which of them respectively have, or pretend to have or claim to the said real or personal estates of the said testator; and that in case the said personal estate of the said testator shall not be sufficient to pay and satisfy your orator's said demands, that then the said real estate may be sold, or so much thereof as shall be necessary, and that out of the money arising by such sale, your orator and others the creditors of the said testator, who shall come in and contribute to the expences of this suit, may be paid their said debts with interest

and costs, and that all proper parties may joie in the sale of the said real estate in such manner as this honourable court shall direct, and that the several witnesses to the said will may be examined as to the execution thereof, and their testimony perpetuated; and that your orator may be further and otherwise relieved in all and singular the premisses, as the nature and circumstance of his case shall require, and as to your Lordship shall seem most meet; May it please your Lordship, &c.

*A bill to secure a jointure, and to supply a defective execution of a power.*

HUMBLY complaining sheweth unto your Lordship, your oratrix *M. H.* the widow and relict, and also the sole administratrix and residuary legatee named in the last will and testament of *E. H.* of \_\_\_\_\_ in the county of \_\_\_\_\_, Esq; your oratrix's late husband deceased, That by indentures of lease and release bearing date respectively, the lease the twenty-second, and the release the twenty-third day of *July* which was in the year of our Lord 1715, the release being quinquepartite, and made, or mentioned to be made, between your oratrix's late husband by his then name, and addition of *E. H.* of \_\_\_\_\_ in the county of \_\_\_\_\_, Esq; and *M. H.* only son and heir apparent of the said *E. H.* of the first part, and *A. H.* of *C.* in the county of \_\_\_\_\_, widow, relict and devisee for life of *M. H.* late of \_\_\_\_\_ aforesaid, Esq; deceased, and *R. W.* spinster, one of the daughters of Sir *J. W.* late of \_\_\_\_\_ in the county of \_\_\_\_\_, Bart. deceased, and neice of the said *A. H.* of the second part, *W. H.* of \_\_\_\_\_ in the county of \_\_\_\_\_, Esq; and *J. A.* of *Gray's Inn* in the county of *Mid-  
der*, Esq; of the third part, Sir *C. P.* of \_\_\_\_\_,  
*Londen,*

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*London, Knight, and A. K. of the parish of —, London, Gent. of the fourth part, and T. S. of — in the county of Middlesex, Gent. of the fifth part.* It is witnessed, that they the said *E. H.* and *M. H.* for the considerations therein mentioned, and for settling the premisses therein and herein after mentioned, did grant and release (amongst other things) all that manor, or reputed manor or lordship, and farms of *D. B.* in — in the county of *Kent*, with the rights, members and appurtenances thereof, and all other manors, or reputed manors, farms, lands, tenements and hereditaments whatsoever of them the said *E. H.* and *M. H.* or either of them in *D. B.* or elsewhere in the county of *Kent*, to hold to the said *W. H.* and *J. A.* their heirs and assigns; and the said premisses are thereby declared to be and stand limited to the said trustees, to the use and behoof of the said *E. H.* for his life without impeachment of waste, with remainder to the said trustee during the life of the said *E.* to preserve contingent remainders; and after the deceases of the said *E. H.* and of dame *E.* his then wife, then to the use of the said *M. H.* and the heirs of his body, with remainder to the first and every other son and sons of the said *E. H.* by the said dame *E.* or any other his after-taken wife or wives, in tail male, remainder to the use of *F. H.* *A. H.* and *E. H.* daughters of the said *E. H.* and all and every other the daughters of the said *E. H.* as tenants in common, and not jointenants, and the heirs of their bodies lawfully issuing; and for want of such issue of any such daughter or daughters, then as to the part or parts of her or them so dying without issue, to the use of the other and others of the said daughter and daughters and the heirs of their bodies by way of cross remainders, till all and every such daughter and daughters are dead without issue, with remainder to the said *M. H.* his heirs and assigns for ever; at

your oratrix further sheweth, that it is provided, declared and agreed by the said indenture of release, if it should happen the said dame *E. H.* should die in the life-time of the said *E. H.* and he should survive her, and should afterwards marry any other woman or women, then and in such case it should be lawful for him to settle and assure so much of the said manor or reputed manor, or lordship and premisses, as should be of, and amount to, or should not exceed the value of six hundred pounds *per annum*, for a jointure and provision for such after-taken wife, or wives, for her or their natural life or lives only, as by the said in part recited indenture (executed by the said *E.* and *M. H.* and others the parties thereto) now in the custody or power of the said *M. H.* and to which for greater certainty as to the exact date and contents thereof, your oratrix hereby craves leave to refer herself, relation being thereunto had, may more fully appear. And your oratrix further sheweth, that by indentures of lease and release bearing date, the lease the twenty-fourth, and the release the twenty-fifth day of *May* in the year of our Lord 1725, the release being tripartite, and made between the said *E. H.* of the first part, your oratrix by her then name and addition of *M. C.* spinster, one of the daughters of Sir *C. C.* late of — in the county of —, Bart. deceased, of the second part, Sir *R. W.* of — in the county of —, Bart. and *C. W.* of — London, Esq; of the third part, after reciting the said indenture of lease and release, of the twenty-second and twenty-third days of *July* 1715, and particularly the said power hereby reserved; and also after reciting that a marriage was then intended shortly to be had and solemnized between the said *E. H.* and your oratrix, it is witnessed, that in consideration of the said intended marriage, and of the sum of two thousand pounds, being the marriage portion of your said oratrix

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oratrix paid to the said *E. H.* before the sealing and delivering thereof, the receipt whereof is thereby acknowledged, and for divers other good causes and considerations therein mentioned, he the said *E. H.* did grant, bargain, sell, release and confirm, unto the said Sir *R. W.* and *C. W.* and to their heirs, all that the said manor and premisses, with the appurtenances herein before particularly set forth, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, To hold the same, and every part thereof, unto the said Sir *R. W.* and *C. W.* their heirs and assigns, to the use and behoof of the said *E. H.* until the said intended marriage, and after the solemnization thereof, to the use of the said Sir *R. W.* and *C. W.* and their heirs, for and during the natural life of your oratrix, upon trust that they and the survivor of them, or the heirs or assigns of such survivor, should yearly and every year during the joint lives of the said *E. H.* and your oratrix, out of the rents, issues and profits of the said premisses, pay or cause to be paid into the proper hands of your oratrix, or into the hands of such other person or persons as she your said oratrix should direct and appoint, the clear sum of one hundred pounds by four equal payments in the year, in manner in the said indentures mentioned, to and for your said oratrix's sole, separate and peculiar use and benefit, and not to be subject to the controul, debts, judgments or intermeddling of the said *E. H.* but the act and receipt, acts and receipts of your oratrix alone, and notwithstanding her coverture, or of such person as your oratrix should appoint to receive the same, to be a good and sufficient discharge for the same; and after the decease of the said *E. H.* in case your oratrix should survive him, upon trust that they the said trustees should, out of the rents, issues and profits of the said premisses, pay or cause to be paid unto your oratrix,

oratrix, yearly and every year during her natural life, the clear and full sum of three hundred pounds by four equal payments in the year, in manner therein mentioned, which is thereby agreed and declared to be in full for her jointure, and in lieu and full recompence, satisfaction and discharge, of and from her dower or thirds at common law, and all and every right and title of dower which your oratrix could or might claim or be intitled unto out of any of the manors, lands, tenements or hereditaments whatsoever of him the said E. H. or which he at any time then after should happen to be seised of or intitled unto; and upon further trust that the said trustees should and would permit and suffer the said E. H. during his natural life, and such other person or persons as should after his death be intitled to the remainder of the rents, issues or profits of the said premises, or would have been so intitled, if the said indenture had never been made, from and after payment of the said yearly sums of one hundred pounds and three hundred pounds respectively, to take and receive to his and their own proper use and uses respectively, all and every the rest, residue and remainder of the rents, issues and profits of the said premises. Provided nevertheless, and it is declared and agreed by the same indenture of release, that in case the said E. H. and such other person and persons as should be intitled to the next and immediate remainder or reversion of the said premises, should yearly and every year pay or cause to be paid unto your oratrix, for and during her natural life, the said yearly sums of one hundred pounds and three hundred pounds respectively as your oratrix should be intitled thereto, and in such manner as the same were respectively made payable as aforesaid, then no use or benefit should be made of the estate thereby made and granted; the same being only intended to be made use of in default of such payment by the said

E. H.

E. H. and such other person and persons as should be intitled to the remainder or reversion of the said premisses as aforesaid; and the said E. H. for himself, his heirs, executors and administrators, did by the said indenture covenant, promise and agree to and with the said Sir R. W. and C. W. their executors, administrators and assigns, that he the said E. H. had full power, good right, and lawful and absolute authority, to grant, release and convey unto the said Sir R. W. and C. W. and their heirs, all and singular the aforesaid premisses in manner aforesaid, and that the same were sufficient in value for the uses, intents and purposes aforesaid, and that it should and might be lawful to and for them the said Sir R. W. and C. W. and their heirs, to hold and enjoy the same accordingly, without the lawful let, suit, trouble, denial, hindrance, molestation, disturbance or interruption of him the said E. H. his heirs or assigns, or any other person or persons lawfully claiming or to claim by, from or under him, them or any of them, and also that the said E. H. should and would, at any time during his life, make, do, suffer and execute all such further and other lawful and reasonable acts, devises and assurances for the more perfect assuring the said premisses, with their appurtenances, unto them the said Sir R. W. and C. W. and their heirs and assigns, for and during the natural life of your oratrix, upon the trusts, and to the intents and purposes aforesaid as they or their counsel should advise or require, as by one part of the said recited indenture duly executed by the said E. H. and now in the custody of your oratrix ready to be produced as this honourable court shall direct, may more fully and at large appear and to which for greater certainty, as to the exact date and contents thereof, your oratrix hereby crave leave to refer herself: And your oratrix further sheweth, that soon after the executing of the last i

part recited indentures in the said year of our Lord 1725, the said marriage between the said *E. H.* and your oratrix was accordingly had and solemnized; and your oratrix further sheweth, that by indentures of lease and release bearing date, the lease the 27th and the release the 28th day of September in the year of our Lord 1735, the release being tripartite, and made between the said *E. H.* of the first part, your oratrix *M. H.* then wife of the said *E. H.* and then late *M. C.* spinster, of the second part, the said Sir *R. W.* Bart. and the said *C. W.* Esq; of the third part, after reciting the said herein before in part recited indenture of lease and release, dated the 22d and 23d days of July 1715, and the proviso therein contained for the enabling the said *E. E.* in case he should happen to survive his then wife dame *E. H.* to settle and assure so much of the said manor and premises therein and herein before mentioned as should amount to, and should not exceed six hundred pounds *per annum* for a jointure and provision for such wife or wives as he should afterwards marry, and after reciting (as the truth was and is) that the said dame *E.* was dead, and the said *E. H.* did her survive, and had then lately intermarried with your oratrix, and also after reciting the said therein before in part recited indentures of lease and release, dated the twenty-fourth and twenty-fifth days of May 1725 then last, and that the said intended marriage had been solemnized between the said *E. H.* and your oratrix; and also after further reciting that the said *E. H.* had not then made any larger or other provision for your oratrix than as above mentioned, nor then fully executed his said power of making a jointure of or to such yearly value for any other after-taken wife, in case of his surviving the same dame *E.* his late wife deceased, and being therefore minded to make a further jointure and provision for your oratrix, in case

she survyed him, by fully executing the power to him given and reserved in that behalf by the said herein before recited indenture quinquepartite of release, dated the said twenty-third day of July 1715, it is witnessed, that in consideration of the premisses, and of the great love and affection he had and bore to your said oratrix his then wife, and for making her a further jointure and provision for her life, in case your oratrix should survive him, and for the fully executing and compleating his said power, and for divers other considerations therein mentioned, he the said E. H. did grant, bargain, sell, release, ratify and confirm unto the said Sir R. W. and C. W. and to their heirs, all that the said manor and premisses herein before particularly set forth, with the appurtenances, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, to hold the said premisses, and every part thereof, to them the said Sir R. W. and C. W. their heirs and assigns, for and during the natural life of your said oratrix, upon trust that they the said Sir R. W. and C. W. and the survivor of them, or the heirs or assigns of such survivor, should and would from and after the decease of your oratrix's said husband E. H. in case your said oratrix should him survive, out of the rents, issues and profits of the said premisses, pay or cause to be paid unto your oratrix yearly, and every year during her natural life, the further clear and full sum of three hundred pounds by equal payments in manner as in the said indenture mentioned; and upon further trust, that they the said trustees should and would permit and suffer the said E. H. during his natural life, and such person or persons as should after his death be intituled to the remainder of the rents, issues and profits of the said premisses, or would have been so intituled if the said indentures had never been made, from and after payment of the said further clear and full yearly sum of three

three hundred pounds, to take and receive to his and their proper use and uses respectively, all and every the rest, residue and remainder of the rents, issues and profits of the said premises. Provided nevertheless, and it is thereby declared and agreed by the said indenture of release, that in case the said E. H. and such other person and persons as should be intitled to the next and immediate remainder or reversion of the said premises, should yearly and every year pay, or cause to be paid unto your oratrix, for and during her natural life, the said further clear and yearly sum of three hundred pounds, in such manner as the same was made payable as aforesaid, then no use or benefit should be made of the estate thereby made and granted; the same being only intended to be made use of in default of such payment by the said E. H. and such other person and persons as should be intitled to the remainder or reversion of the said premises as aforesaid; and the said E. H. for himself, his heirs, executors and administrators, did also by the said indenture covenant, promise, grant and agree, with the said Sir R. W. and C. W. that the said E. H. had full power, good right, lawful and absolute authority to grant, release and convey unto the said Sir R. W. and C. W. and their heirs, all and singular the aforesaid premises, in manner aforesaid, and that the same were sufficient in value for the uses, intents and purposes aforesaid; and that it should and might be lawful, to and for them the said R. W. and C. W. and their heirs, to hold and enjoy the same accordingly, without the let, suit, trouble, denial, eviction, ejection, molestation, disturbance or interruption of him the said E. H. his heirs or assigns, or any other person lawfully claiming or to claim by, from or under him, them, or any of them, and also that the said E. H. should and would at any time then after, during his life, make, do, suffer and execute, all such further

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and other lawful and reasonable acts, devises and assurances, to the more perfect assuring the said premises with their appurtenances unto them the said Sir R. W. and C. W. and their heirs and assigns, for and during the natural life of your oratrix, upon the trusts, and to the intents and purposes aforesaid, as they or their counsel should advise or require, as by one part of the said in part recited indenture duly executed by the said E. H. and now in the custody of your oratrix, and ready to be produced, as this honourable court shall direct, relation being thereto had, may more fully and at large appear; and to which, for greater certainty as to the exact date and contents thereof, your oratrix humbly craves leave to refer herself. And your oratrix further sheweth, that by indentures of lease and release, bearing date respectively, the lease the fourteenth, and release the fifteenth days of January in the year of our Lord 1731, the release being tripartite, and made or mentioned to be made between the said E. H. your oratrix's said late husband of the first part, your said oratrix of the second part, and the said Sir R. W. and C. W. of the third part, after reciting the said herein before in part recited indentures of lease and release dated the twenty-second and twenty-third days of July 1715, and the proviso therein contained for enabling the said E. H. in case he should happen to survive his then wife dame E. to settle so much of the said manor and premises therein and herein beforementioned, as should amount to, and should not exceed six hundred pounds *per annum* for a jointure, and provision for such wife or wives, as he should afterwards marry; and after reciting that the said E. H. was dead; and also after reciting the said herein before in part recited indentures of lease and release dated the twenty-first and twenty-fifth days of May 1715, and also after reciting that the said marriage therein mentioned

tioned to be intended to be had and solemnized between the said *E. H.* and your oratrix, had been had and solemnized; and also after reciting the said recited indenture of lease and release dated the twenty-seventh and twenty-eighth days of *September* 1725, it was and is witnessed, that in consideration of the premisses, and for the further, better and more effectual securing the payment of the said several and respective yearly sums of one hundred pounds, three hundred pounds, and three hundred pounds in and by the said several herein before in part recited indentures mentioned and secured to be paid to your oratrix, as a jointure and provision for her life, in case the your said oratrix should happen to survive the said *E. H.* and for divers other considerations therein mentioned, he the said *E. H.* did grant, bargain, sell, release, ratify and confirm unto the said Sir *R. W.* and *C. W.* and their heirs, all that the manor and premisses, with the appurtenances herein before particularly set forth, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part thereof, unto the said Sir *R. W.* and *C. W.* and their heirs and assigns, for and during the natural life of your oratrix, upon trust, that they and the survivor of them, or the heirs or assigns of such survivor, should yearly and every year during the joint lives of the said *E. H.* and your oratrix, out of the rents, issues and profits of the said premisses, pay or cause to be paid into the proper hands of your oratrix, or into the hands of such other person or persons as the your said oratrix should direct and appoint, the clear sum of one hundred pounds, by four equal payments in the year, in the manner in the said indenture mentioned, to and for your oratrix's sole, separate and particular use and benefit, and not to be subject to the control, debts, engagements or intermeddling of the said *E. H.* but the act and receipt,

acts and receipts of your oratrix alone, notwithstanding her coverture, or of such person as your oratrix should appoint to receive the same, to be a good and sufficient discharge for the same; and after the decease of the said E. H. in case your oratrix should survive him, upon trust, that they the said trustees should out of the rents, issues and profits of the premisses, pay or cause to be paid unto your oratrix yearly and every year during her natural life, the clear and full sum of six hundred pounds by four equal payments in the year, in the manner therein mentioned, which is thereby declared and agreed to be in full for her jointure, and in lieu and full recompence, satisfaction, and discharge of and for her dower or thirds at common law, and all and every right and title of dower which your oratrix could or might claim or be intitled unto out of any of the manors, lands, tenements or hereditaments whatsoever of him the said E. H. or which at any time then after should happen to be seised of or intitled unto; and upon further trust, that they the said trustees should and would permit and suffer the said E. H. during his life, and such other persons or person as should after his death be intitled unto the remainder of the rents, issues and profits of the said premisses, or would have been so intitled if the said indenture had never been made from and after payment of the said yearly sum of one hundred and six hundred pounds respectively, to take and receive to his and their own proper use and uses respectively all and every the rest, residue, and remainder of the rents, issues and profits of the said premisses; Provided nevertheless, and it is declared and agreed by the said now recited indenture of release, that in case the said E. H. and such other person and persons as should be limited to the next and immediate remainder and reversion of the said premisses, should yearly and every year pay or cause to be paid unto you

your oratrix, for and during her natural life, the said yearly sum of one hundred pounds and six hundred pounds respectively, in such manner as the same is made payable as aforesaid, then no use or benefit should be made of the estate thereby; and by the above recited indentures of lease and release respectively made and granted to the said Sir R. W. and C. W. or either of them, the same being only intended to be made use of in default of such payments by the said E. H. or such other person or persons as should be intitled to the remainder or reversion of the said premisses as aforesaid; and it is by the said now recited indenture declared and agreed, that the said above recited indenture of settlement on your oratrix, and also the said now recited indenture was and were made to secure to your oratrix the said sum of one hundred pounds *per ann.* during the joint lives of the said E. H. and your oratrix; and after the decease of the said E. H. in case your oratrix should him survive, to secure to your oratrix a jointure not exceeding in the whole six hundred pounds *per annum*, according to the power reserved and given to the said E. H. in and by the first above recited indentures of settlement. And the said E. H. for himself, his heirs, executors and administrators, did by the now recited indenture of release and covenant, promise and grant to and with the said Sir R. W. and C. H. their executors, administrators and assigns, that he the said E. H. had full power, good right, and lawful and absolute authority to grant, release and convey unto the said Sir R. W. and C. W. and their heirs, all and singular the aforesaid premisses in manner aforesaid; and that the same were sufficient in value for the uses, intents and purposes aforesaid; and that it should and might be lawful to and for them the said Sir R. W. and C. W. and their heirs, to hold and enjoy the same accordingly.

without the lawful let, suit, trouble, denial, eviction, ejection, molestation, disturbance or interruption of him the said *E. H.* his heirs or assigns, or any other person or persons lawfully claiming or to claim by, from or under him, them or any of them; and also that the said *E. H.* should and would at any time then after during his life make, do, acknowledge, suffer and execute such further and other reasonable acts, devises and assurances for the more perfect assuring the said premisses with their appurtenances unto them the said Sir *R. W.* and *C. W.* and their heirs and assigns, during the natural life of your oratrix, upon the trusts, and to the intents and purposes aforesaid, as they or their counsel should advise or require, as by one part of the said indentures duly executed by the said *E. H.* and now in the custody of your oratrix ready to be produced, as this honourable court shall direct, relation being thereto had, may more fully and at large appear; and to which for greater certainty as to the exact dates and contents thereof your oratrix hereby craves leave to refer herself. And your oratrix further sheweth, that on or about the thirteenth day of *October* in the year of our Lord 1736, the said *E. H.* your oratrix's late husband departed this life leaving issue the said *M. H.* his only son and heir at law. Your oratrix further sheweth unto your Lordship, that upon or immediately after the said testator's death the said *M. H.* entered upon and took possession of all and singular the said manors and premisses so settled as aforesaid, which your oratrix permitted him to do, well hoping that he the said *M. H.* would either have paid or caused to have been paid unto your oratrix, or unto such person or persons as she should appoint, the said clear yearly sum of six hundred pounds in manner as the same is directed to be paid by the said several herein before recited indentures

of

of settlement, or some or one of them, or else that he would have set out and conveyed to your oratrix, or to such person or persons as she should appoint, so much and such part of the said premisses as would make six hundred pounds a year for your oratrix's jointure, especially as it does manifestly appear (as your oratrix doth charge and insist from the said indentures) that it was the intent and meaning of your oratrix's said late husband, and of all the parties to the said indentures, that your oratrix should have such jointure made to her as he was enabled to make by virtue of the said first mentioned indentures of lease and release of the 22 & 23 of July 1715. But now so it is, may it please your Lordship, that the said *M. H.* hath entered into a combination and confederacy with the said Sir *R. W.* and *C. W.* and with divers other persons at present unknown to your oratrix, whose names when discovered your oratrix prays may be inserted in this her bill, with apt words to charge them as parties hereto, how to injure your oratrix in the premisses, and to deprive and defeat your oratrix of the benefit of the said several indentures of settlements; and in order thereto the said *M. H.* and his said confederates sometimes pretend that no such indentures of settlement as are herein before mentioned to bear date on the said twenty-second and twenty-third days of *July 1715.* were ever made and executed; or that if the same were so made and executed, yet that there is no such proviso contained therein for enabling the said testator *E. H.* (your oratrix's late husband) to settle or assure so much of the said premisses herein contained as should be of and amount to, or should not exceed the value of six hundred pounds a year for a jointure, and provision for such wife or wives as he should then after marry, in case he should happen to survive his wife *E. H.* Whereas the said *M. H.*

and

and his said confederates well know the truth to be, and your oratrix doth expressly charge that such indentures of such date and contents, and with such proviso therein contained as herein before mentioned, were duly made and executed; And at other times the said *M. H.* and his said confederates will admit the same, and will also admit that such several other indentures aforesaid were duly made and executed: But then he and they insist that the same are not a due and legal execution by the said *E. H.* of the power given to him by the said proviso in the before mentioned indentures of settlement of the twenty-second and twenty-third days of July 1715, such power not having been, as he and they say, well pursued by the said *E. H.* in regard that he ought not, and hath no power to settle any sum of money upon your oratrix, by way or in the nature of a rent-charge, but only to settle and convey so much of the said premises as would amount to six hundred pounds a year by way of jointure for your oratrix, and particularly as to the said deeds made in September 1725, and in January 1731, he the said *M. H.* says and insists, that they being made after marriage are voluntary and fraudulent as against him; whereas your oratrix doth charge and insist that all the said deeds are good and valid deeds, and that as the said first mentioned deed of settlement, to which the said *M. H.* was a party, gave your oratrix's said late husband a power of making a jointure of six hundred pounds a year as aforesaid, without mentioning whether the said jointure should be made before or after marriage, he might and had authority to execute such power either before or after marriage, which fact the said *M. H.* will at other times admit. But then he insists, that the said several settlements so made for your oratrix's benefit as aforesaid are void, by the strict rules of the common law, as not pursuing the said

said power, and that the same being void at law ought not to be set up or insisted upon in a court of equity; whereas your oratrix doth charge and insist, that supposing (but not admitting) the said settlements to be void or voidable by the strict rules of the common law, yet your oratrix's said late husband having by the said settlements manifestly declared his intention of securing to your oratrix a jointure of six hundred pounds a year, according to his said power, the same ought to be secured to your oratrix accordingly by the said *M. H.* out of the said premisses; and if there is any defect in the execution of the said power by your oratrix's said late husband, which at common law might be taken advantage of by the said *M. H.* yet your oratrix doth charge and insist, that such defective execution ought to be supplied and made good in equity, so as to bind the said estate and premisses into whose hands soever the same shall come. And your oratrix further sheweth, that the said Sir *R. W.* and *C. W.*, have not acted in the trust reposed in them as aforesaid, and say and insist that they neither can nor will act therein or in any other trust for your oratrix without being directed thereto and indemnified therein by the decree of this honourable court. **In tender consideration** whereof, and for as much as your oratrix can obtain no relief in the premisses, except in a court of equity, where matters of this nature are properly cognizable; **To the end therefore** that the said *M. H.*, Sir *R. W.* and *C. W.*, and the rest of the confederates, when discovered, may true and sufficient answer make to all and singular the premisses, and that as fully, clearly and absolutely as if the same were here again repeated and interrogated and that not only as they know, but also as they remember, believe, or have heard; and more especially, that the said *M. H.*

and

and his said confederates may set forth, whether the several indentures of lease and release as aforesaid were not made, and by and between whom executed; and that the said confederates may set forth, whether the said *E. H.* did not intermarry with your oratrix at or about the time aforesaid, or when else; and at or about what time did he die, and who hath received the rents and profits of the said premisses ever since his death, and to what yearly amount, and who is now in receipt thereof; and that the said *M. H.* may discover and produce the said first mentioned indentures of lease and release, and may either be decreed to pay your oratrix her said rent-charge of six hundred pounds a year already due and hereafter to grow due, and that the same may be confirmed to be as this honourable court shall direct, or else that she may have a conveyance of so much of the said premisses as will amount to six hundred pounds a year decreed to be executed to her, or to such person or persons as she shall appoint by the said *M. H.* during her life, and that the defective execution of the said power (if any) may be supplied by this honourable court, so as to bind the said estate and premisses, and that the said *M. H.* may be decreed to account for the rents and profits of the said premisses, and that your oratrix may be paid thereout what shall appear to be due to her for the arrears of her said jointure, or intended jointure, and that the said Sir *R. W.* and *C. W.* may be compelled to join in, do and execute such acts and deeds as this honourable court shall think fit to direct, and that your oratrix may be further or otherwise relieved in all and singular the premisses as the nature and circumstance of her case shall require, and as to your Lordship shall seem meet. May it please your Lordship, &c.

*A bill*

A bill to perfect a marriage settlement brought by a feme covert by her next friend and her trustees.

To the Right Honourable, &c.

HUMBL Y complaining shew unto your Lordship, your orators *A. B.* and *C. D.* of, &c. and your oratrix the Right Honourable *E.* countess of *F.* formerly *E. H.* only child and daughter of *G. H.* of, &c. lately deceased, by *J. K.* Esq; her next friend, That the Right Honourable *L.* earl of *F.* being seised, or pretending to be seised, of an estate in fee-simple or fee-tail, in divers manors, lands, tenements and hereditaments lying and being in the several counties of *M.* and *N.* of a very considerable yearly value, sometime in the year 1735 made his addresses, by way of courtship, for marriage to the said *E.* now countess of *F.* and upon a treaty between the said earl and the said *G. H.* the father of the said countess, (and previous to the intermarriage) it was proposed and agreed by the said *G. H.* to give his daughter the sum of — as her marriage portion, and — more at the death of him and his wife; and the said earl, in consideration thereof, on his part purposed to settle and assure divers manors, lands and hereditaments, effectually to secure a competent jointure upon your oratrix in case she should survive the said earl, and for a provision for the children that should happen to be born of the said marriage; and your orators and oratrix shew, that in order to answer these purposes, previous to the said marriage by indentures of lease and release, the release bearing date on or about the 12th day of *May* 1735, and made between the said *L.* earl of *F.* of the first part, the said

## Bills and Answers.

said *G. H.* since deceased, and *E. H.* now your oratrix, and countess of *F.* of the second part, and your orators, by the names of *A. B.* and *C. D.* of the third part, reciting, that a marriage was then intended (and since solemnized) between the said earl of *F.* and your oratrix, and that the said *G. H.* had agreed to give and advance as a marriage portion with his daughter the sum of — in present, and the further sum of — at the death of him the said *G. H.* and his wife; and that in consideration thereof, the said earl should settle such annuity on his said intended wife, and all and every the lands, tenements and hereditaments therein comprised, to such uses and upon such trusts, as therein is expressed: It is by the said indenture of release witnessed, that in consideration of the said — to him the said *L.* earl of *F.* in hand paid by the said *G. H.* as the present marriage portion of his daughter, and of the sum of — secured to be paid as therein is mentioned, and for the making a provision for your oratrix, and for settling the manors, lands and hereditaments therein mentioned, to such uses, and upon such trusts as therein are expressed, the said *L.* earl of *F.* granted and released to your orators *A. B.* and *C. D.* all those manors of *O. P.* and *Q.* in the several counties of *M.* and *N.* or one of them, and all messuages, farms, lands, tenements and hereditaments to the said several manors belonging or appertaining, therein particularly described, lying and being in the several parishes of — and — in the said several counties of *M.* and *N.* To hold the said premisses unto your orators the said *A. B.* and *C. D.* and their heirs, to the use of the said *L.* earl of *F.* until the said intended marriage should take effect, remainder to the use of the said *L.* earl of *F.* for life, without impeaching of waste, remainder to the said trustees (meaning your orators) to preserve contingent

tingent remainders during the life of the said earl, remainder to the use and purpose that the said *E. H.* (now your oratrix) might immediately after the decease of the said earl, have and receive a rent-charge of 1600*l.* during her life, in bar of her dower, remainder to your orators *A. B.* and *C. D.* for 99 years, upon trust in case such annuity should be in arrear three months, that then they might raise the same out of the rents, issues and profits of the said premises; and upon further trust, that until such default, to permit and suffer the rents, issues and profits thereof, to be had or received by the person or persons next in remainder; remainder to the use of the first and all other the sons of the body of the said earl, on the body of the said *E. H.* to be begotten successively in tail male, remainder to the use of the said trustees, their executors, administrators and assigns, for term of 300 years, remainder to the right heirs of the said *L. earl of F.* for ever; and the trust of the said term of 300 years is by the said indenture of release declared to be, in case of failure of issue male of the said intended marriage, for raising portions for daughters, and for a maintenance for them until the same should be paid; and the said earl thereby covenanted for himself, his heirs, executors and administrators, to and with the said *A. B.* and *C. D.* their executors and administrators, that he, notwithstanding any act of his own or his ancestors, was lawfully seised of the premisses in fee-simple or fee-tail, and that notwithstanding any such act as aforesaid, he had in himself full and absolute power to convey the said manors, lands and hereditaments, to the uses and upon the trusts herein expressed; and for the further and better securing and conveying the said manors, messuages, lands, tenements, hereditaments and premisses thereby released, to the several uses, trusts, intents and purposes thereby declared concerning the same;

same; It is thereby on the part of the said L. earl of F. covenanted, and for his heirs, executors and administrators, to and with the said A. B. and C. D. their executors and administrators, to suffer a common recovery or recoveries of all the said premises, to and for the several uses, intents and purposes, and upon the trusts, and under and subject to the provisoes and agreements therein before limited and expressed concerning the same, with a covenant for further assurance, whereby such further assurance, and the said recovery thereby covenanted by the said earl to be suffered, and all other assurances theretofore had, are declared to be to the several uses, intents and purposes, and upon the trusts, and under and subject to the provisoes and agreements therein before limited and appointed concerning the same, as in and by the said indentures of release, relation being thereunto had, may, when the same shall be produced, more fully appear; and your orators and oratrix further shew, that the said intended marriage soon after took effect, and the said G. H. paid unto the said earl of F. —— as the present portion of your oratrix the countess, and that —— part thereof was applied, by the direction of the said earl, in discharge of several mortgages and incumbrances which affected the said premises, or some part thereof; and the said earl of F. hath on the back of the said indenture of release indorsed a receipt for the said ——, and thereby expressed how the same had been applied, to which your orators and oratrix refer, and your orators and oratrix further shew unto your Lordship, that the said L. earl of F. being seised not only of the said manors, lands, and hereditaments in the said in part recited indenture of release contained, but likewise of divers other manor lands and hereditaments in tail male, by virtue of a settlement made on or about the 30th day of

Mar

March 1687. by G. late earl of F. deceased, great uncle to the now earl, or by some other settlement of his ancestors; and the said estate-tail then and now existing, it became necessary for the said L. earl of F. to suffer a common recovery, or to make some further and other assurance concerning the said premisses mentioned in the settlement on the marriage of your oratrix, in order the better to secure in all events the provision thereby intended your oratrix the countess, and likewise to prevent the trusts and limitations of the said settlements upon any future contingency that hereafter may arise from being frustrated and rendered of no effect; your orators and oratrix therefore hoped that the said L. earl of F. would have done every thing in his power for the making the said provisions by the said settlement secure to your oratrix in the event of her surviving the said earl, and for rendering effectual all the said several trusts, uses and limitations of the said deed in all events; and for that purpose the said earl hath been frequently applied to by your orators and oratrix: But now so it is, may it please your Lordship, that the said L. earl of F. and the honourable U. P. of, &c. cousin of the said earl of F. and eldest son and heir of F. P. Esq; deceased, combining and confederating together, set up various pretences to the detriment and injury of your oratrix the now countess of F. and the said earl of F. to prevent the securing in an effectual manner her jointure, and the other provisions intended by the said settlement, sometimes insist, that the said settlement already made as aforesaid is sufficient, and all that is in his power to make, and that he has not a legal freehold in him whereby he can be enabled to make a good tenant to the *præcept* for suffering a common recovery, and for that purpose the said confederates pretend that the title the premisses settled or intended to be settled as

aforesaid, is as follows, *to wit*, that the said G. late earl of F. being seised in fee of and in divers manors, messuages, lands, tenements and hereditaments of a considerable yearly value in the counties of M. and N. did by indentures of lease and release, the release bearing date on or about the 30th day of March 1687. between the Right Honourable the said G. earl of F. of the one part, and J. K. of, &c. and L. M. of, &c. of the other part, the said earl G. in consideration of a marriage then before had and solemnized between the said earl and the countess of F. his then wife, eldest daughter of, &c. and for the further and better assuring the manors, lands, and hereditaments therein after mentioned to be limited to the said Countess for her life, and for her jointure, and for settling and assuring several of the manors, lands, tenements and hereditaments therein after mentioned to descend and come with the Earldom of F. unto the heirs male of the body of the said Earl of F. and for want of such heirs male, to the honourable O. P. brother of the said Earl, and to his sons and issue male severally and successively one after another, according as the said several manors, lands and hereditaments are therein after mentioned to be limited to them; so that the said several manors, lands and hereditaments might be continued together in the family of the said Earl, and for settling and conveying other the manors and lands therein mentioned upon several uses, intents and purposes, he the said Earl G. did thereby grant and release unto the said J. K. and L. M. and to their heirs, all those, &c. To hold the said premises, with their and every of their appurtenances unto the said J. K. and L. M. their heirs and assigns, to the several uses, trusts, intents and purposes, and under the provisoes, powers and agreements therein after mentioned, declared and contained, that is to say, as for the several manors or  
&c.

to the use of the said Earl G. for his life, without impeachment of waste, and from and after his decease, to the use of the said A. his then Counsels, for her life for her jointure; and as to and for the said manors and premisses after their decease, and also as for and concerning all other the manors, meitiages, farms, lands, tenements and hereditaments of him the said Earl therein before mentioned, to the use of the said Earl G. and the heirs male of his body; and for default of such issue, to the use of his brother O. P. for and during the term of 99 years, if he should so long live, without impeachment of waste other than for wilful pulling down of houses, stocking up wood, and plowing up meadow grounds, and from and after the determination of the said term of 99 years, to the use of the said J. K. and L. M. and their heirs, for the life of the said O. P. to support contingent uses, and from and after the decease of the said O. P. to the use of Q. P. son and heir apparent of the said O. P. for and during the term of 99 years, if the said Q. P. should so long live, without impeachment of waste, under the restrictions aforesaid; and from and after the determination of the said term of 99 years, to the use of the said trustees and their heirs for the life of the said Q. P. to support the contingent uses; and from and after the decease of the said Q. P. to the use of the 1st, 2d, 3d, and every other the son and sons of the said Q. P. severally and successively, and of the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing; and for default of such issue, to the use of S. P. (late father of the now earl of F.) one other of the sons of the said O. P. for and during the term of 99 years, if he should so long live, without impeachment of waste, under the restrictions aforesaid; and from and after the determination of the

said term of 99 years, to the use of the said trustees and their heirs, for the life of the said S. P. to support the contingent uses; and from and after the decease of the said S. P. to the use of his 1st, 2d, 3d, and every other the son and sons of the said S. P. severally and successively, and of the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing; and for default of such issue, to the use of all and every other the son and sons of the said O. P. in tail male; and for default of such issue, to the use of the said G. Earl of F. his heirs and assigns for ever, with a power for the said O. P. Q. P. and S. P. as they should severally be in the actual possession of the said premises, to make leases not exceeding 21 years at the most improved yearly rent, and that it is therein provided, that the said O. P. Q. P. and S. P. being in the actual possession of the premises, should be empowered to make jointures each not exceeding 1000*l. per ann.* and that it is therein provided that the said Earl G. might, during his life, by any deed or deeds, or by his last will and testament in writing revoke, alter and make void the uses therein before limited; and it is alledged that the said G. Earl of F. died in the year 1688, without issue male, and without revoking or altering the said settlement, or any of the uses or limitations thereof, but left the said O. P. his brother and the said A. his Countess Dowager; and that upon his death the said O. then Earl of F. entered upon the said manors and premises, and was seised and possessed thereof according to the uses and limitations in the said deed of settlement in 1687, and had issue two sons, *to wit*, Q. P. and S. P. (which said S. was the father of the now Earl of F.) and that the said Earl O. departed this life in the year 1709, and that thereupon Q. his eldest son the Earl of F. (uncle to the now Earl) entered upon the manor.

manors and premisses aforesaid, and was possessed thereof by virtue of the settlement of 1687, for the term of 99 years, if he should so long live, and that the said Earl Q. departed this life in the year 1718 without issue, so that the said S. P. the second son of the said Earl O. (and father of the now Earl) succeeded to the earldom, and by virtue of the said settlement of 1687 was possessed of and in the said manors and premisses of an estate for the term of 99 years, if he should so long live, with remainder to his first and every other son in tail male, and that the said Earl S. on or about 1733. departed this life, leaving L. (the now Earl of F.) his only son and child; and it is pretended by the said confederates, that by indenture of bargain and sale bearing date on or about the 31st day of March 1715, and afterwards inrolled in the high court of Chancery according to the due form of law made between the said Q. (then Earl of F.) of the first part, W. E. Esq; and E. H. Gent. of the second part, and J. W. Gent. of the third part, the said Earl Q. granted, bargained and sold to the said W. E. and E. H. and their heirs, the several Manors or Lordships of O. P. Q. with their appurtenances in the said several counties of M. and N. &c. To hold the same unto and to the use of the said W. E. and E. H. and their heirs, to make them tenants of the freehold in a recovery to be suffered, wherein the said Earl Q. was to be vouched; and it is thereby declared, that the said recovery when perfected, and the recoveror therein named and his heirs, should stand and be seised of the said manors and premisses therein comprised, and all other persons which then after should be seised thereof by virtue of the same recovery, should stand and be seised thereof to the use of such person and persons, for such estate and estates, and in such manner and for such uses and purposes, and upon such trusts,

conditions or limitations, as the said Earl Q. by any writing or writings under his hand and seal testified by two or more witnesses, should direct, limit or appoint; and it is insisted by the said confederates, that in *Easter* term in the first year of the reign of his Majesty King *George I.* a common recovery was accordingly suffered of the said manors and premisses; and it is further insisted by the said confederates, that by indentures of lease and release, bearing date on the 30th and 31st days of *March* 1715, the release being quadripartite, and made between the said Earl Q. of the first part, the said W. E. and E. H. of the second part, the said J. W. of the third part, and T. E. and J. E. of the fourth part, It is thereby witnessed, that in order to settle the said manors and premisses before mentioned in the name and blood of the said Earl Q. and as and for a declaration of the uses of the common recovery agreed to be suffered by the said indenture tripartite, as of all other assurances at any time then and after to be had, of all or any of the said manors and premisses, it is by the said indenture declared and agreed between the parties thereto, and the said Earl Q. thereby directed, limited and appointed, that the said common recovery so agreed and intended to be suffered, and all other assurances whatsoever of the premisses to be had, should be and enure, and should be deemed and taken to be and enure, and the said J. W. the recoverer in the said recovery, and his heirs, and all other person or persons which then after should be or stand seised of the same premisses by virtue of the said recovery, or any other or further assurances which should be made of the same manors and premisses, should so stand and be seised of the same premisses to the uses following that is to say, to the use of the said Earl Q. and the heirs male of his body, remainder to the use of the Honourable S. P. -uncle of the said Ear-

(and)

(and father of the now Earl) for 99 years, if he should so long live, without impeachment of waste, remainder to the use of the said T. E. and J. E. and their heirs during his life, to preserve contingent uses, remainder to the use of the said L. P. (the now Earl, son and heir apparent of the said S. P. for 99 years, if he should so long live, without impeachment of waste, other than for wilful pulling down of houses, stocking up woods, or ploughing up meadow grounds; remainder to the same trustees during his life, to preserve contingent uses, remainder to the first and other sons of the said L. P. the now Earl, successively in tail male, remainder to the use of all other the sons of the said S. P. successively in tail male, remainder to the use of the Honourable F. P. and the heirs male of his body, remainder to the use of the said Earl Q. and his heirs; and it is thereby further declared, that it should be lawful to and for the said S. P. and L. P. (the now Earl) as they should respectively be in possession of the said manors and premisses, to grant, limit or appoint any of the premisses to any wife or wives, which either of them should then after marry, for life for their jointure, not exceeding in the whole 1000*l. per annum*, and that it should be lawful for the said Earl Q. at any time during his life, by any deed or deeds, writing or writings by him executed in the presence of three or more witnesses, to revoke the uses before limited or declared, and by the same or any other deed so executed, to limit new uses touching the said premisses, or any part thereof, as he should think fit; and it is alledged by the said confederates, that the said Earl Q. in the year 1718, departed this life without issue, and without revoking any of the uses in the last mentioned deed, and that thereupon the earldom devolved upon the said S. P. (father of the now Earl) and the said L. Earl of F. and the said U. P.

do insist, that by the said recovery the limitations in tail under the settlement of 1687 were barred and extinguished; but your orators and oratrix are advised and insist, that such recovery is a void recovery for want of a good tenant to the precipice, inasmuch as the said Q. earl of F. was, at the time of executing the said deed and suffering the said common recovery, only tenant for 99 years under the said settlement of 1687, or of some other settlement or assurance of the ancestors of the said earl, and that the freehold was then standing out in the trustees named in the settlement of 1687, or in some other trustees who did not join in such recovery, and therefore that notwithstanding such deeds and recovery might be executed and suffered, yet as the said Q. earl of F. is now dead without issue, the title and estate hath of right devolved upon the present earl, who by virtue of the settlement of 1687 is (as your orators and oratrix are advised) tenant in tail in possession of the premises aforesaid; but by such means and pretences of the said confederates, the securing in an effectual manner the provisions intended your oratrix by the said settlement is to her great prejudice delayed, and in case the said L. (the now earl) should die before your oratrix without making some further assurance, the said settled estate may, by virtue of some former settlement, go over to the said U. P. or some other remote remainder man, in which event your oratrix may, in some measure, be defeated of the provision intended her by the said settlement; though at other times it is admitted by the said L. earl of F. and U. P. that the said common recovery is in itself void, and hath no operation in law; and your oratrix humbly insists, that the said settlement made upon her marriage, and the trusts thereof, ought to be executed and performed in the most beneficial manner, in order to answer the ends and intents thereof; and

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the rather, as your oratrix, and her father G. H. lately deceased, had no notice of the said settlement and pretended assurances of the ancestors of the present earl now set up and pretended to be in force; But your oratrix and her father, and the trustees, were assured and did imagine, that the said earl was feised of an estate in tail of the said premises mentioned in her marriage settlement, or of some other estate of inheritance, whereby he might have been unable to have suffered a common recovery, or of making other assurances for the assuring and effectually securing the provisions intended your oratrix by the said settlement in case your oratrix should survive the present Earl, and all other provisions intended by the said settlement; and under the confidence that the said Earl was so feised, the said G. H. her father, not only paid to the said Earl, or to his order, and by his direction, the said sum of \_\_\_\_\_ as her marriage portion, but likewise agreed to give and advance unto the said Earl the further sum of \_\_\_\_\_ upon the death of him and S. his wife, and by indentures of demise and grant of several manors, &c. for a term of years thereby created, hath secured the same to be so paid; and your oratrix hopes that in case it should be determined by this honourable court, that the said L. now Earl of F. is intitled to only an estate for years or life, in the manors, lands and tenements in your oratrix's said marriage settlement contained, or any of them, then that he may be obliged out of other his manors, lands and hereditaments, effectually to secure unto your oratrix the said rent-charge of 1600/ a year intended as a jointure and provision for your oratrix by the said marriage settlement in case your oratrix should survive the said Earl, and likewise to make good and secure to your oratrix the other provisions made or intended for her by the said settlement, or at least such part of the said rent-charge

charge and jointure, as the powers by any of the family settlements of making jointures shall fall short to answer and make good; And the said U. P. claims some right or title to the said premisses, and insin's your oratrix's said settlement ought not to be carried into execution, but refuses to discover what right he claims, or how he claims the same, and what reasons he has against your oratrix's said settlement being carried into execution. In tender consideration whereof, and forasmuch as your orators and oratrix are intirely remediless in the premisses according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable; To the end therefore, that the said L. Earl of F. and U. P. may true and perfect answer make to all and singular the several matters and things herein before set forth, and that in as full and ample manner as if the same were here repeated, and they were interrogated thereto, and more especially that they may set forth and discover whether such settlement of the 10th day of May 1735, or of some other date, and when, was not, on or before the intermarriage of the said Earl L. with your oratrix, made and entered into by the said L. Earl of F. and whether the same is not to the purport and effect as herein before is set forth, or to what other purport and effect, and whether the marriage portion of your oratrix did not amount to the sum as herein before is mentioned, and whether —, part thereof, was not accordingly paid to and received by the said Earl L. or whether the same or part thereof was not paid and applied according to the order and direction of the said Earl L. and whether the further sum of —, residue of your oratrix's portion, be not secured to be paid at the death of the said G. H. and his said wife; and that the said Earl L. may set forth, whether such settlement bear-

ing date on or about the 30th day of March 1687, or of some other and what date, and to the purport and effect aforesaid, or to some other and what purport and effect, was not executed by the said Earl G. (great uncle of the now Earl) and that he may produce the said deed, and may set forth the substance of all and every the deed and deeds hereinbefore mentioned, and likewise all other deeds and writings in his custody or power relating to the said premisses or to his estate and interest therein, and that he may produce the said several deeds and settlement before this honourable court, and that the said U. P. may set forth, whether he is not the eldest son and heir of F. P. named in the said indenture of the 31st of March 1715, and whether the said F. P. is not dead, and how long since, and whether he claims any estate in remainder or otherwise, and under what title, in any and which of the premisses in your oratrix's said marriage settlement contained, and why he objects to your oratrix's said settlement being effectually carried into execution, and that the said L. Earl of F. may specifically perform his covenant in the said marriage settlement, and be obliged to suffer one or more recovery or recoveries, or make some further and other assurance, of and in respect of the premisses contained in the settlement on the marriage of your oratrix, as this honourable court shall think fit, in order more effectually to secure in all events the said provisions made your oratrix by the said settlement, and that all proper parties may join in suffering a compleat recovery or recoveries, and in all such further and other acts and assurances in the law, as are necessary for substantiating the said settlement, and for carrying the same into a perfect and effectual execution; and that your orators and oratrix may have such further and other relief touching the premisses as shall be agreeable to justice and the nature of their case; **May it therefore**

saye please your Lordship to grant unto your orators and oratrix your Lordship's letter missive directed to the said L. Earl of F. desiring him to appear to, and answer your orator's said bill, or in default thereof, his Majesty's most gracious writ or writs of *subp<sup>a</sup>na* directed to him the said L. Earl of F. and also to the said U.P. thereby commanding them, and every of them, at a certain day and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, and then and there particular answer make to all and singular the premisses, and to stand to and abide such further order and decree in the premisses as to your Lordship shall seem meet. And your orators and oratrix shall ever pray, &c.

*A bill for an account of the rents and profits of mortgaged premisses, and for a redemption, &c.*

HUMBL<sup>Y</sup> complaining, sheweth unto your Lordship, your orator M. B. of \_\_\_\_\_ in the county of \_\_\_\_\_, esq; that J. B. late of \_\_\_\_\_, otherwise \_\_\_\_\_ in the said county of \_\_\_\_\_ deceased, being seized and possessed of, and well intitled in fee-simple, or some other good estate of inheritance of, in and to a messuage, farm and lands in \_\_\_\_\_ aforesaid, and in \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ in the said county, or in some or one of them, or in some adjacent town or towns, of the yearly value of sixty pounds and upwards, part whereof was and is freehold, and other part thereof copyhold estate of inheritance, and holden of the lords of the several manors of \_\_\_\_\_, late \_\_\_\_\_, otherwise \_\_\_\_\_ with \_\_\_\_\_, and \_\_\_\_\_ with \_\_\_\_\_; and being so seized and possessed, by indenture bearing date on or about the 25th day of

March

March 1698, made or mentioned to be made between the said J. B. of the one part, and J. K. of — in the said county of — since deceased, of the other part, in consideration of the sum of sixty pounds paid by the said J. K. to the said J. B. he the said J. B. did grant, bargain, sell, &c. unto the said J. K. his executors, administrators and assigns, all —, part of the said estate, to hold so much thereof as was and is freehold, for the term of five hundred years, to commence from the date of the said indenture, and to hold so much of the said premisses as is copyhold at the will of the lord or lords of the respective manors whereof the same are holden according to the custom of such manors respectively, in which said indenture is contained a proviso or condition for making void the same on payment of the sums of one pound and sixteen shillings and sixty-one pounds and sixteen shillings, by the said J. B. his heirs, executors or administrators, unto the said J. K. his executors, administrators and assigns, at the several times therein mentioned, and now long since past; and your orator further sheweth, that by indenture tripartite bearing date on or about the twenty-ninth day of December 1705, made or mentioned to be made between the said J. K. of the first part, the said J. B. of the second part, and W. G. and R. W. of the third part, after reciting that the said J. B. did then stand indebted unto the said J. K. in the sum of two hundred pounds for principal and interest on the aforesaid mortgage, and for several other sums of money at divers times advanced and lent by the said J. K. to the said J. B. he the said J. K. in consideration of the said sum of two hundred pounds paid to him by the said W. G. and R. W. did, by and with the direction and consent of the said J. B. assign the said mortgaged premisses unto them the said W. G. and R. W. to hold to them, their executors, administrators and assigns, for

for the then residue of the said term of 500 years, and the said J. B. did ratify and confirm the said premisses to them the said C. and W. their executors, administrators and assigns, for the residue of the said term of 500 years; and for the better securing the repayment of the said sum of two hundred pounds and interest, the said J. B. did by the same indenture grant, bargain and sell unto the said C. and W. all his the said B.'s freehold messuages, lands, tenements and hereditaments in — and — aforesaid, not before assign'd by the same indenture; To hold to them the said C. and W. their executors, administrators and assigns, for the term of five hundred years, to commence from the date of the said last mentioned indenture, subject to a proviso and covenant therein contained, that upon payment of the sum of two hundred and ten pounds in manner therein mentioned, by the said J. B. his heirs, executors or administrators, unto the said W. C. and R. W. their executors, administrators or assigns, they the said W. C. and R. W. their executors, administrators and assigns, should, at the costs of the said J. B. his heirs or assigns, re-convey the said mortgaged premisses unto the said J. B. his heirs or assigns, or as he or they should appoint, free from all incumbrances done by them the said C. and W. or either of them; and the said J. B. did, about the time of the date of the said last mentioned indenture, surrender all his copyhold lands and tenements held of the several manors aforesaid, to the use of them the said W. C. and R. W. and their heirs, as a further security for the payment of the said sum of two hundred and ten pounds, and to be void on payment thereof in manner aforesaid; And your orator further sheweth, that soon after the execution of the said last mentioned indenture, he the said J. B. being of sound and disposing mind, memory and understanding, did duly make and publish

publish his last will and testament in writing, bearing date on or about the eighth day of *February* one thousand seven hundred and five, which will was by him duly executed in the presence of three credible witnesses according to the statute in that case made and provided, and thereby the said testator did devise all the said mortgaged premisses to *E.* his wife for her life, and after her decease to his son *R. B.* and his heirs lawfully to be begotten; and the said testator *J. B.* died soon after the making of his said will, without altering or revoking the same; and your orator further sheweth, that after the death of the said *J. B.* by indenture bearing date on or about the first day of *April* one thousand seven hundred and twelve, between the said *E. B.* and the said *R. B.* of the one part, and the said *R. W.* of the other part, the said *W. C.* being then dead, after reciting amongst other things, that they the said *E.* and *R. B.* had then borrowed of the said *W.* the further sum of sixty pounds, they the said *E.* and *R. B.* thereby agreed that the said freehold and copyhold premisses should stand charged not only with the said sum of two hundred pounds and the interest thereof, but also with the said sum of sixty pounds and interest for the same, after the rate of five pounds for one hundred pounds for a year from the time of the date of the said last mentioned indenture; and your orator further sheweth, that afterwards, in or about the month of *November* 1714, the said *R. B.* died intestate without leaving any issue of his body, whereupon all his estate, right, interest and equity of redemption of, in and to the said mortgaged premisses, descended and came to *A.* the wife of one *R. T.* she being the only sister and heir at law of her said deceased brother *R. B.* and also only surviving daughter and heir at law of the said testator *J. B.* and your orator further sheweth, that soon after the death of the said *R. B.* by indenture bearing date on or about

about the first day of January 1714, made between E. D. widow (late the widow and relict of the said testator J. B.) and the said R. T. and A. his wife of the one part, and the said R. W. of the other part, after reciting that they the said E. D. and R. T. and A. his wife, then stood indebted to the said R. W. in the said principal sums of two hundred pounds and sixty pounds herein before mentioned, upon the several securities aforesaid, and that they had then borrowed of him the further sum of one hundred and forty pounds, it was thereby agreed, that all the aforesaid mortgaged premises, as well freehold as copyhold, should stand and be a security, not only for the said principal sum of two hundred and sixty pounds, but also for the said sum of one hundred and forty pounds, amounting together to the sum of four hundred pounds, and the interest thereof from the date of the said last mentioned indenture; and your orator further sheweth, that by indenture quadripartite bearing date on or about the twenty-sixth day of March 1719, made or mentioned to be made between H. W. widow and administratrix of the before-named R. W. of the first part, E. B. of the second part, the said E. D. R. T. and A. his wife of the third part, and D. D. gent. since deceased, of the fourth part, reciting that all interest of the said four hundred pounds was paid to the day of the date of the said last mentioned indenture, and that two hundred pounds, part of the said principal sum of four hundred pounds, was the proper money of the said E. B. and that the remaining two hundred pounds was the proper money of the said H. W. as the administratrix of her late husband, who died intestate, and reciting that the said R. T. had occasion for the further sum of eighty pounds, the said last mentioned indenture witnessed, that in consideration of the said sum of two hundred pounds paid to the said E. B. and of

the said sum of two hundred pounds paid to the said *H. W.* and also in consideration of the said sum of eighty pounds paid to the said *E. D.* and *R. T.* by the said *D. D.* she the said *H. W.* by and with the consent and direction of the said *E. B.* *E. D.* *R. T.* and *A.* his wife, did assign all the said mortgaged premisses to the said *D. D.* To hold the said freehold premisses to him, his executors, administrators and assigns, for the residue of the said terms of five hundred years and five hundred years herein before mentioned; and the said *E. D.* *R. T.* and *A.* his wife thereby ratified and confirmed the said assignment, and also bargained and sold the said copyhold premisses to the said *D. D.* his heirs and assigns, subject to the proviso contained in the said indenture for making the same void, as to the said copyhold premisses, and for re-conveying and re-assigning the said freehold premisses upon payment of the sum of five hundred and four pounds, as therein is mentioned, that is to say, the sum of twelve pounds, part of the said five hundred and four pounds, upon the twenty-seventh day of *March* in the year of our Lord 1720, and soon after the execution of the said last mentioned indenture, the said *E. D.* and the said *R. T.* and *A.* his wife, did in due form of law surrender all and singular the said copyhold premisses held of the several manors aforesaid, into the hands of the respective lords of the said manors, to the use of the said *D. D.* and his heirs, under a condition for redemption of the said copyhold premisses on payment of the said five hundred and four pounds in manner aforesaid, and satisfaction was thereupon entered on the former surrenders and other instruments herein before mentioned, now in the custody or power of the defendant herein after named, as, had your orator the same to produce, would more fully and at large appear; And your orator further sheweth unto your

Lordship, that in or about the year of our Lord 1726, the said *A.* the wife of the said *R. T.* died without having made any disposition of her said equity of redemption, of and in the said mortgaged premisses, by means whereof the same descended and came to her two daughters and coheirs *A.* and *S. T.* who were then infants under the age of twenty-one years, that is to say, the said *A.* was then about ten years of age, and the said *S.* about nine years of age, and from and after the death of the said *A. T.* the mother, the said *R. T.* the father of the said *A.* and *S. T.* the infants, continued in possession of the said mortgaged premisses until about the year of our Lord 1730, and during all that time paid all interest due to the said *D. D.* on his said mortgage; and your orator further sheweth, that *E. A.* of —— aforesaid, esq; being desirous to get the said mortgaged premisses into his own possession, and to become the purchaser of the inheritance and equity of redemption thereof; and apprehending, that if the debt charged on the said premisses was increased, the said *R. T.* and his children would be obliged to sell the same, he the said *E. A.* did with that view and for that purpose, apply to the said *D.* about the latter end of the year 1729, and did prevail on the said *D.* to get himself admitted tenant of the said copyhold estates held as aforesaid of the lords of the said four several manors (the fines of three of which said manors were arbitrary); and after such admissions the said *A.* further prevailed on the said *D.* to surrender all the said copyhold premisses unto him the said *A.*, although the said *D.* before such application of the said *A.* was very well contented with his said security without putting the mortgaged estate to the charge or expence of such admissions and the said *A.* as soon as the said copyhold premisses were surrendered to him by the said *D.* as aforesaid procured himself to be admitted tenant thereto, b  
mean

means whereof two fines became due, and were paid to each of the lords of the said four several manors, on the said several and respective admissions of the said *A.* and *D.* and double fees were also paid to the stewards of the said four several manors, amounting together to the sum of seventy pounds and upwards, which the said *E. A.* now insists the said mortgaged premisses ought to be charged with; and your orator further sheweth, that the said *E. A.* did about the same time prevail on the said *D.* to assign the said freehold premisses (so mortgaged to him the said *D.* as aforesaid) unto him the said *A.* but by what deed, of what date, or for what consideration such assignment was made, the said *A.* refuses to discover, and the said *E. A.* hath ever since *Lady-Day* 1730, been in possession of all the said mortgaged premisses, and received the rents and profits thereof, and applied the same to his own use; and your orator further sheweth, that the said *R. T.* died on or about the — day of —, after whose death *A. T.* the elder daughter of the said *R. T.* by the said *A.* his wife, intermarried with *R. P.* and attained her age of twenty-one years on or about the fifteenth day of *April* 1737, and the said *S. T.* the younger daughter of the said *R. T.* by the said *A.* his wife, did also attain her age of twenty-one years on or about the 10th day of *April* 1738, and your orator having agreed with the said *R. P.* and his wife for the absolute purchase of their moiety of the inheritance and equity of redemption of all the said mortgaged premisses, both freehold and copyhold for the sum of one hundred pounds, they the said *R. P.* and his wife, by indentures of lease and release, the lease bearing date the twenty-second, and the release the twenty-third day of *July* 1737, in consideration of the sum of one hundred pounds to them paid by your orator, did grant and release unto your orator and his heirs, All that their moiety or half

half part of and in all and singular the said premisses comprised in the aforesaid mortgages, or in any of them, and all the right, title, interest and equity of redemption of them the said *R. P.* and *A.* his wife, or either of them, of, in and to the same premisses, or any part thereof; To hold unto your orator, his heirs and assigns, to the use of your orator, his heirs and assigns for ever; and pursuant to a covenant in the said indenture of release contained, the said *R. P.* and *A.* his wife, joined in levying a fine of the said premisses to the use of your orator, his heirs and assigns for ever; And your orator having also agreed with the said *S. T.* for the absolute purchase of her moiety of the inheritance and equity of redemption of all the said mortgaged premisses both freehold and copyhold, for the like sum of one hundred pounds, she the said *S. T.* by indenture of lease and release, the lease bearing date the eleventh, and the release the twelfth day of April 1738. In consideration of the sum of one hundred pounds to her paid by your orator, did grant and release to your orator and his heirs, All that her the said *S.*'s moiety or half-part, of and in the same premisses, and all her right, title, interest and equity of redemption of, in and to the same, and every part thereof; To hold unto your orator, his heirs and assigns, to the use of your orator, his heirs and assigns for ever, and the said *R. P.* and *A.* his wife, and the said *S. T.* for the several considerations aforesaid, have severally surrendered at the said copyhold premisses herein before mentioned into the hands of the respective lords of the said four several manors, whereof the same are held to the use of your orator, his heirs and assigns for ever, according to the custom of the said manor respectively, as by the said several indentures of lease and release, and surrenders, it doth and may appear; and your orator further sheweth, that he hath caused his said purchase deeds to be produced

and shewn to the said *E. A.* to be by him inspected and perused, that he might satisfy himself in respect to your orator's title to the equity of redemption of the said mortgaged premisses; and the said *E. A.* accordingly inspected and perused the same, and seemed to be satisfied with your orator's title to the equity of redemption of the said mortgaged premisses; and your orator hath divers times since his said purchase, by himself and agents, applied to the said *E. A.* and in a fair and friendly manner desired him to produce and shew to your orator or his agents, the deeds and securities whereby he claims to have any charge or incumbrance on the said mortgaged premisses, that your orator might know what, and how much principal money the said premisses do now stand lawfully charged with, and liable to; and your orator hath also requested of the said *E. A.* that he would come to a just and fair account with your orator touching the rents and profits of the said mortgaged premisses, received by him, or any other person or persons for his use, or which without his wilful default he might have received, and also touching what is due to him the said *E. A.* for principal and interest on the aforesaid mortgages, and your orator hath offered, and doth hereby offer to pay unto the said *E. A.* what upon a fair account shall appear to be justly due unto him, and lawfully charged on the said premisses by virtue of the said mortgages, immediately after settling the said account, or at the end of three or six months then next following, as should be most agreeable to the said *E. A.* And your orator hath also offered, that if any difficulty should arise in settling the said account, the same should be referred to two indifferent persons to be chosen by the said *A.* and your orator, and that if any question of law should arise, the same should be determined by the opinion of some counsel to be agreed

on between them, and your orator had reason to hope that the said *E. A.* would have complied with your orator's said just and reasonable offers and requests: But now so it is, may it please your Lordship, that the said *E. A.* sometimes pretends that he hath an absolute estate in law in the said mortgaged premisses, and that he did, so long ago as the year of our Lord 1730, purchase the equity of redemption of the said mortgaged premisses of the said *R. T.* and that the said *R. T.* did, by some indenture or articles of agreement under his hand and seal, covenant and agree, that the said *R. T.*, and his two daughters herein before named, should and would, when and as soon as his said daughters should respectively attain the age of twenty-one years, release and convey the equity of redemption of the said mortgaged premisses unto him the said *E. A.* in consideration of a certain sum of money pretended to be paid to the said *R. T.* and his said two daughters, or some or one of them; whereas your orator chargeth, that if any such deeds or articles was or were executed by the said *R. T.* as aforesaid (which your orator doth not admit,) yet the said *E. A.* never paid any consideration for the same; and in regard the said *A.* and *S. T.* the daughters of the said *R. T.* were then infants under the age of twenty-one years, your orator is advised and humbly insists, that they were not in any bound thereby, but that the equity of redemption of the said freehold and copyhold premisses, being so conveyed and surrendered to your orator as aforesaid, he ought to stand in the place of the said *A.* and *S.* the daughters of the said *R. T.* and *A.* his wife, and ought to be let into a redemption of the said mortgaged premisses upon payment of what shall appear to be justly due to the said *E. A.* by and under the aforesaid indenture of mortgage of the twenty-sixth day of March 1719, and other

other times the said *E. A.* pretends that the said *R. T.* borrowed several other sums of money of the said *D.* and of him the said *E. A.* over and besides the said sum of four hundred and eighty pounds, to the amount in the whole of the sum of seven hundred pounds principal money, or some other considerable sum, and that the same now stands charged on the said mortgaged premisses by virtue of some deed or deeds, writing or writings entered into and executed by the said *R. T.* whereby he hath covenanted and agreed with the said *D.* and *E. A.* or one of them, to charge the said mortgaged premisses with the said sum of seven hundred pounds, or some other considerable sum of money; but the date, purport and contents of such deeds or writings, or for what consideration the same was or were made, the said *E. A.* altogether refuses to discover, and hath refused or declined to produce the same to your orator or his agents, and hath pretended that he was advised it was improper for him to produce the same, so that your orator cannot certainly know what sum of principal money is really charged on the said mortgaged premisses; and your orator expressly charges, and so the truth really is, that no fine was ever levied by the said *A.* the wife of the said *R. T.* nor any surrender made by her, save only for the charging the said premisses with the said sum of four hundred and eighty pounds and interest, in manner aforesaid; and your orator is advised, and humbly insists, that the said mortgaged premisses, being the inheritance of the said *A.* the wife of the said *R. T.* the same could not in law be made subject to the covenant of the said *R. T.* nor to any agreement entered into by the said *R. T.* and *A.* his wife during her coverture, if any such there be (which your orator doth not admit;) nor ought the said *A.* the wife of the said *R. T.* or her issue, or your orator who claims under them,

to be bound by such covenant or agreement, nor ought their estate or interest in the premises to be in any sort affected thereby; but your orator ought to be let into a redemption of all the said mortgaged premisses, both freehold and copyhold, on payment of the aforesaid principal sum of four hundred and eighty pounds, and interest, without any regard to any covenant or agreement entered into by the said *R. T.* alone, or by him and the said *A.* his wife during her coverture; and the said *E. A.* being the lord of the manor of — with —, hath taken the court-books relating to the said manor from his steward, and keeps the same in his own custody, and absolutely refuses to admit your orator to that part of the said copyhold premisses which is holden of his said manor, and which has been surrendered unto your orator as aforesaid; and the said *E. A.* doth also refuse to discover unto your orator, what sums of money have been received by him, or by any other person or persons by his order, or for his use, or which without his wilful default might have been received by and out of the rents and profits of the said mortgaged premisses; and the said *E. A.* hath plowed up the land-marks in order to prevent your orator from discovering the true boundaries of the said mortgaged premisses, and hath laid out great sums of money in and about the fences and inclosures of the said premisses, in an unnecessary and unprofitable manner, and with design to increase the debt on the said estate, and to prevent your orator from seeking a redemption thereof; All which actings, doings and pretences of the said *E. A.* are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and for that your orator is utterly remeiless, by the strict rules of the common law, and cannot have a discovery of the truth of the several matters

matters aforesaid, but by the corporal oath of the said *E. A.* nor can your orator be let into redemption, or have an account of the rents and profits of the said mortgaged premisses, without the aid and assistance of a court of equity before your Lordship, where matters of this nature are properly cognizable and relieviable; **To the end thereof** that the said *E. A.* may, upon his corporal oath, full, true, distinct and perfect answer make, to all and singular the matters and things, herein before set forth, as fully and particularly as if the same were here again repeated and interrogated; and more especially, that he may set forth and discover, whether he doth not know or believe, that the said *J. B.* was seised and possessed of such freehold and copyhold premisses, of such yearly values as herein before mentioned, or any other; and what freehold and copyhold estate or estates, where situate, in whose tenure or occupation, and at, and under what yearly rent; and of what manor or manors the said copyhold premisses are holden; and whether the said *J. B.* did not make such mortgages of the said premisses as aforesaid, or what other mortgages, by any and what deeds or surrenders, of what date, and to what purport or effect, and for what consideration really and truly paid, as he the said *E. A.* knows, has heard or believes; and whether the said *J. B.* did not make and duly publish such last will and testament, of such date and purport as aforesaid, or to what other purport or effect; and whether the same was duly executed, and before whom, as he knows, believes, or has been informed; and whether the said *J. B.* did not die soon after making his said will, or at any other, and what time; and whether the said *E. B.* the widow of the said *J. B.* and the said *R. B.* the son and heir of the said *J. B.* devisees by and under the will of the said *J. B.* did not make such mortgage as before mentioned, or any

any other, and what mortgage of the said freehold and copyhold premisses, and by what deeds, surrenders, or other instruments, and when dated and executed, and for what consideration really and truly paid, and whether he doth not know or believe, that the said *R. B.* died intestate, and without issue of his body at the time aforesaid, or at any other, and what time, and whether his estate and interest in the said premisses, did not, as he believes, or has been informed, descend and come unto *A.* the wife of the said *R. T.* as only sister and heir at law of the said *R. B.* and only daughter and heir at law of the said testator *J. B.* and whether *E. B.* the relict of the said *J. B.* and the said *T.* and his wife did not duly make and execute such mortgage or security as aforesaid, or any other, and what mortgage or security of the said freehold and copyhold premisses, or any, and what part thereof, unto the beforenamed *R. W.* and by what deeds or instruments, when dated and executed, and for what consideration really and truly paid, and when, and to whom, and where, and before whom, and whether such assignment was made of the said mortgage to the said *D.* as aforesaid, and when, and who are parties thereto, and by whom was the same executed, and before what witnesses, and where do those witnesses live, and may be found or heard of, and whether such surrender was made to the said *D.* as aforesaid, and what consideration money was really paid, by the said *D.* for such assignment and surrender, and when, and where, and before whom was the same paid; and whether upon surrendering the said copyhold premisses to the said *D.* as aforesaid, satisfaction was not acknowledged upon all former surrenders, made by way of mortgage of the same premisses as aforesaid, and whether the said *A.* the wife of said *R. T.* did not die about the time aforesaid, without making any disposition of her

her equity of redemption of and in the said mortgaged premisses, or any part thereof, and whether the right and equity of redemption of the said A. T. did not, on her death, descend to her two daughters, subject to the estate for life of the said R. T. their father, in the said freehold premisses, as tenant by the courtesy of *England*, and if the said T.'s said daughters were not infants of such respective ages as aforesaid, at the death of their said mother, and whether the said R. T. did not continue in possession of the said mortgaged premisses, and pay all interest on the aforesaid mortgage until the twenty-sixth day of *March* 1730. or to what other time, and whether the said R. T. and his wife made any, and what further mortgage to the said D — or the said E. A. by any, and what deeds, surrenders, or other instruments, and when dated and executed, and for what consideration really and truly paid, and when, and where, and by whom, to whom, and before whom was the same so paid, and that he, the said E. A. may set forth the date, substance, and short contents of all deeds, surrenders, and other securities whatsoever, in his custody or power, any way affecting the said mortgaged premisses, either freehold or copyhold, or any part thereof; and whether he, the said A. did not, for the reasons aforesaid, or for what other reasons, apply to the said D. and persuade him to get himself admitted to all the said copyhold premisses, and whether the same are not held of four several manors, and if the fines due to the lords of the said manors, or any, and which of them, are not arbitrary, and what such fines and steward fees did amount unto, on the several admissions of the said D. and A. respectively, and if the said D. was not content with his security without such admission, till such application was made to him by the said A. as aforesaid, and if such application was not made by

## Bills and Answers.

by the said *A.* as aforesaid, and with intent to load the said estate with expence, so that the said *T.* and his children might be obliged to sell the same, and whether he the said *A.* did not then design to become the purchaser thereof, and with that view did not procure the said *D.* to assign his said securities and surrender the said copyhold premisses to him the said *A.* and if he the said *A.* did not frequently, by himself or agents, apply to the said *D.* in order to prevail on him to make such assignment and surrender, and if he the said *A.* did not pay, or agree to pay the said *D.* some premium, present, or other gratuity or reward for so doing, over and above what was justly due on the said securities, and whether the said *A.* did settle any account with the said *D.* of what was due to him for principal and interest on the said securities, and that he may set forth such account in the very words and figures thereof, and whether he hath been admitted to the said copyhold premisses or any, or what part thereof, and when, and what did the fines and fees, on such admission amount unto, and that the said *E. A.* may set forth, whether the said *R. T.* and his wife did ever levy any fine or make any surrender of the said freehold or copyhold premisses, or any, and what part thereof, unto the said *D.* or *E. A.* or either of them, for the securing the said sum of four hundred and eighty pounds and interest, as herein is set forth, and that he may set forth when such fine was levied (if there be any such) and what were the uses thereof declared to be, and by what deed or writing, when dated and executed, and who are parties and witnesses thereto, and what consideration was really paid for the same, by whom, and to whom, and when, where, and before whom, and when the said *E. A.* or his agents first of all had possession of the said mortgaged premisses, and from what time he or they have received

ceived the rents and profits thereof, and who had the possession, and received the rents of the said premisses until that time, and that he may set forth a full, true and just account of the rents and profits of all and singular the said mortgaged premisses, received by him or any other person or persons for his use, or which, without his wilful default, might have been received, and when, and of whom, and for what the same were severally received, and when, and at what time in particular the said *R. T.* died, and whether his said daughters did not attain their respective ages of twenty-one years at the several times aforesaid, or at what other times; and whether the said *A.* the daughter of the said *R. T.* did not intermarry with the said *R. P.* as aforesaid, and whether your orator hath not purchased the equity of redemption of all the said mortgaged premisses, both freehold and copyhold of the said *R. P.* and *A.* his wife, and *S. T.* the daughters and heirs of the said *A.* the wife of the said *R. T.* and whether the same hath not been so conveyed and surrendered to your orator as aforesaid, and whether he the said *E. A.* hath not refused to admit your orator to that part of the copyhold premisses which are held of the said manor of — with — and if he hath not taken the court-books from his stewards on purpose to prevent your orator's admission to the said premisses, and whether your orator hath not made such application, and such offers and requests to him the said *A.* as aforesaid, and why, and for what reason he refused or declined to accept of such offers, or to comply with such requests, and if it was not with design to increase the debt on the said mortgaged premisses, so that the same may not be worth redemption; and more particularly, that the said *A.* may answer whether your orator hath not caused his purchase deeds to be produced and shewn to him the said *A.* and

and whether he did not inspect or peruse the same, or whether your orator's agent did not read the same over to him, and whether he hath not refused to produce or shew his securities to your orator or his agents, and hath declared, that he was advised not to produce the same, and whether the said *A.* hath not pretended to be absolutely intitled to the same mortgaged premisses, and to the equity of redemption thereof, under some, and what articles of agreement, alledged to be entered into between him and the said *R. T.* and whether the said *R. T.* had a right to make such agreement, and what consideration was paid for the same, and whether the said *A.* and *S. T.* the daughters of the said *R. T.* were, or were not infants at the time such agreement was entered into, and whether he the said *A.* doth not now insist on such agreement or not; and that the said *E. A.* may set forth what is now justly due to him, for principal and interest on any, and what mortgage or mortgages of the freehold or copyhold premisses aforesaid, or any, and what part thereof, and how he computes and makes out the same, and if he insists on any principal sum, over and besides the said four hundred and eighty pounds, that then he may particularly set forth and discover how, and by what deeds, surrenders, or other conveyances the same is become chargeable on the premisses aforesaid, and that he may answer and set forth, whether he hath not ploughed up the land-marks and made divers new fences and inclosures on the said premisses, in a very unnecessary and unprofitable manner, for the purposes, and with the intent beforementioned; and that the said *E. A.* may answer all and singular the premisses, not only as to what he himself knows, but also as to what he hath heard, been informed, and believes concerning the same respectively, and when, and by whom he had such information; and that the said *E. A.* may

may come to a fair and just account with your orator for the rents and profits of all the said mortgaged premisses, both freehold and copyhold, which have been received by him, or any other person or persons for his use, or which, without his wilful default, might have been received, and that upon payment of what shall appear to be justly due to the said *E. A.* on the aforesaid mortgages for four hundred and eighty pounds, and interest (after a deduction of what hath been, or might have been so received by him as aforesaid) your orator may be let in to a redemption of all the said mortgaged premisses; and that the said *A.* and all persons claiming under him, may convey and surrender all the said premisses to your orator and his heirs; or as he shall direct and appoint, free from all incumbrances, done by him the said *A.* or any person or persons claiming under him; and that your orator may be further and otherwise relieved in the premisses, as the nature of his case shall require, and according to the rules of equity and good conscience. May it please, &c.

*A bill for redemption of a mortgage.*

HUMBLY complaining sheweth unto your Lordship your orator *A. B.* of, &c. That your orator having occasion to borrow the sum of six hundred pounds, did apply himself for that purpose to *C. D.* of, &c. who agreed to lend to your orator the same; and your orator, for securing the re-payment thereof, with interest, did agree to mortgage to the said *C. D.* the messuages, &c. and premisses herein after mentioned, and accordingly your orator did execute to the said *C. D.* one indenture bearing date on or about the — day of — and which was made between your orator of the

the one part, and the said C. D. of the other part, and by the said indenture your orator, in consideration of the sum of six hundred pounds, to him in hand paid, by the said C. D. did demise, &c. unto the said C. D. his executors, administrators and assigns, All that, &c. To hold unto the said C. D. his executors, administrators and assigns for the term of 99 years, subject to a proviso or condition of redemption on payment of the said sum of six hundred pounds with interest for the same, on the — day of — 1739; as in and by the said indenture of mortgage, in the custody of the said G. D. when produced, will more fully and at large appear; and your orator farther sheweth unto your Lordship, that your orator hath paid all interest for the said sum of six hundred pounds till Christmas 1740. to the said C. D. but the said C. D. in order to distress your orator, hath caused declarations in ejectment to be delivered to the tenants in possession of the said premises, and doth threaten that he will get into possession thereof, and receive the rents and profits of the said premises, altho' your orator hath always been, and still is ready to pay to the said C. D. what is due to him for principal and interest on the said mortgage, and did actually on or about the — day of — 1740. tender and offer to pay to the said C. D. the said sum of six hundred pounds together with all interest due for the same, at the time the said tender was made being the sum of —, being for three months interest then due for the said sum of six hundred pounds at five pounds by the hundred by the year and also the sum of — for the costs of the said declarations; and your orator well hoped that the said C. D. would have received the said several sum of money so offered and tendered to be paid to him by your orator as aforesaid, and either have delivered up unto your orator the said mortgage

dec

deed to be cancelled, or have re-assigned the same to your orator, as in justice and equity he ought to have done: *But now so it is*, may it please your Lordship, that the said C. D. combining and confederating himself to and with divers other persons, at present unknown to your orator, whose names when discovered your orator humbly prays may be inserted in this his bill of complaint, with apt and proper words to charge them; he the said C. D. (in order to deprive and defeat your orator of the benefit of redeeming the said mortgaged premisses) does pretend and give out in speeches, that your orator did not borrow of the said C. D. the said sum of six hundred pounds, nor execute the said mortgage deed to the said C. D. for securing the repayment thereof with interest as aforesaid, but does pretend that the said sum of six hundred pounds was paid to your orator in consideration of the absolute purchase of the said premisses for the said term of 99 years; and at other times he does admit that a deed of the same date as above-mentioned, and made by the same parties, was executed by your orator, but that your orator did thereby absolutely dispose of the said term of 99 years without such proviso of redemption as above-mentioned; whereas your orator chargeth, and so the said C. D. well knows, as the truth really is, that the said sum of six hundred pounds was borrowed upon the terms aforesaid, and upon no other consideration whatsoever, and that such deed with such proviso as above-mentioned was executed by your orator as aforesaid, for the securing the repayment of the said sum of six hundred pounds with interest as aforesaid, and that no other deed was executed by your orator relating to the said sum of six hundred pounds or otherwise, than what your orator has above mentioned; and at other times the said C. D. does admit that such deed was

executed as above mentioned, but does pretend that at the time of the tender above-mentioned, great arrears of interest were due and owing from your orator to the said C. D. amounting to the sum of one hundred and fifty pounds and upwards, whereas your orator chargeth, and so the truth really is, that no more than the sum of seven pounds ten shillings was due and owing from your orator to the said C. D. for the interest of the said six hundred pounds at the time of the said tender; and upon the pretences aforesaid the said C. D. refuses to come to any manner of account with your orator, or to reconvey the said premises to him, and is proceeding at law as fast as he can, in order to get into possession of the said premises; *All whi<sup>b</sup> affi<sup>ngs, doings and pretences</sup> of the said C. D. and his confederates are contrary to equity and good conscience, and tend to your orator's apparent wrong and injury.* In tender consideration whereof, and forasmuch as your orator is altogether remediless in the premises by the strict rules of the common law, and cannot have any discovery or relief touching the matters and things aforesaid, without the aid and assistance of this honourable court, where matters of account and redemption of estates are properly cognizable and relievable; To the end therefore, that the said C. D. and his confederates (when discovered) may upon his and their corporal oaths (to the best of his and their remembrance, knowledge and belief) true, perfect and direct answer make to all and singular the matters and things aforesaid, as fully as if the same were herein again repeated, and then thereunto particularly interrogated, and more especially that the said C. D. may set forth whether your orator did not, and when, apply to him to borrow the said sum of six hundred pounds, or another sum of money; and whether such deed was not executed by your orator, with such proviso

the repayment of the said sum of six hundred pounds with interest at *5 per cent.* as above-mentioned, or how otherwise, and whether your orator did not constantly, and to what time, pay the interest that became due for the said sum of six hundred pounds to the said *C. D.* or some person or persons, for his use and by his order or direction, and whether your orator did not make such tender of such several sums of money, as above-mentioned, to the said *C. D.* or how otherwise, and that the said *C. D.* may set forth what was due and owing to him on the said mortgage for principal and interest, and his costs at law respectively, at the time of the said tender, and that he may set forth why, or for what reason, he refused to receive the said several sums of money so tendered as above-mentioned; and that your orator may be at liberty to redeem the said mortgaged premisses; and that the said *C. D.* upon your orator's paying to him what shall appear to be due to him, for principal and interest on the said mortgage, together with his costs at law at the time the said several sums of money were so tendered to him by your orator as aforesaid, which your orator hereby offers to pay, and that thereupon the said *C. D.* may reconvey and reassign to your orator the premisses aforesaid, free and clear of all incumbrances done by him, or any claiming by, from or under him; And that your orator may have and receive such further and other relief in the said premisses, as the nature of this your orator's case doth or may require, and as to your Lordship shall seem meet; *May it please your Lordship* (the premisses considered) to grant unto your orator his Majesty's most gracious writ or writs of *subpæna* to be directed to the said *C. D.* and his confederates when discovered, thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in

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this honourable court, then and there upon their several and respective corporal oaths, true and perfect answer to make to all and singular the premisses; and farther to stand to and abide such order and decree therein as to your Lordship shall seem meet. And your orator shall ever pray, &c.

### *A bill to foreclose.*

H U M B L Y complaining, sheweth unto your Lordship, your orator R. S. of —, gent. That in or about the year of our Lord 1727, P. J. of — in the county of — yeoman, being or pretending to be seised in fee, or of some other good and sufficient estate of inheritance, of and in the manor, messuages, farms, lands, tenements and hereditaments hereip after mentioned; and having occasion for money, did apply to your orator, and desire your orator to lend him the said P. J. the sum of —, and in order to secure the repayment of the same with interest, after the rate of — by the hundred by the year, did propose to mortgage to your orator the said manor, &c. which he did affirm to your orator were free from all prior incumbrances, save a term of five hundred years in some part of the same premisses, which (as the said P. J. informed your orator) was then vested in L. M. of — in the county of — gent. In trust for the said P. J. his heirs and assigns, and to be disposed of and assigned as he or they should direct; And your orator further sheweth unto your Lordship, that your orator did comply with the said request of the said P. J. and did accordingly lend him the said sum of —, and for securing the repayment thereof with interest as aforesaid, by indentures of lease and release bearing date respectively the twentieth and twenty-first day of April

1727

1727, and made between the said P. J. (by the name and description of, &c.) [if necessary] and Q. his wife, of the one part, and your orator and one A. B. of, &c. esq; (since deceased) of the other part, the said P. J. for and in consideration of the sum of —— of lawful, &c. to him in hand paid by your orator, and of five shillings paid to him by the said A. B. (which sum of —— your orator charges was really and truly paid by your orator to the laid P. J.) did grant, bargain, sell, release and confirm unto your orator and the said A. B. (in their actual possession then being by virtue of the said indenture of lease for a year, and by force of the statute for transferring uses into possession) and to their heirs and assigns, All that the manor of G. with its rights, members and appurtenances in the county of E. and all messuages, barns, buildings, edifices, stables, yards, gardens, orchards, lands, tenements, wood-grounds, leafows, commons, common of pasture, demesne lands, courts baron, courts leet, perquisites and profits of courts, fines, heriots, reliefs, amerciaments, rents, services, escheats, waifs, estrays, deodands, felons goods, warrens, heaths, mines, moors, marshes, patronages and benefices of churches and chapels, advowsons, franchises, privileges, profits, commodities, advantages, emoluments, jurisdictions and hereditaments whatsoever to the said manor belonging or appertaining, or reported to belong or appertain thereunto; And also all that messuage or tenement, with the appurtenances, situate, standing and being in —— in the said county of —— on the east side the said green there; and also all that orchard and close of pasture thereunto adjoining and belonging; and also all those several pieces or parcels of arable land, lay, meadow and grass-ground, and lot-grass, with their appurtenances, lying dispersedly within the common fields, liberties, meadows, parishes, boundaries and

precincts of — and — in the said county of —, containing by estimation fourscore acres; And also all those several pieces or parcels of arable land, lay, meadow and pasture or grass ground, and lot-grass, with their appurtenances, lying and being dispersedly within the common and open fields, liberties, meadows, parishes, precincts, and territories of — and — aforesaid, containing by estimation forty-three acres, thentofore in the tenure or occupation of S. C. and W. J. their assignee or assignees; And also all that messuage, tenement or farm-house, with the appurtenances, situate, standing and being in — aforesaid, and thentofore in the possession of T. B. yeoman (a messuage or tenement there or then late of W. P. on the north-east part thereof, and the messuage or tenement of the said P. J. therein and herein before mentioned on the south-east part thereof) which said last mentioned messuage or farm-house was thentofore purchased by the said P. J. of and from one T. B. And all other the messuages, lands, tenements and hereditaments whatsoever of him the said P. J. in possession, reversion, or remainder, situate, lying or being in the parishes of — and — aforesaid in the said county of — or any of them, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of him the said J. P. of, in and to the same manor, lands and premises, and every part and parcel thereof; To hold the said manor, messuages, farms, lands, tenements, hereditaments and premises, and all and singular other the premises mentioned to be thereby granted and released aforesaid, with their and every of their appurtenances, unto your orator and the said A. B. their heirs and assigns, To the only proper use and behoof of your orator and the said A. B. their heirs and assigns for ever: Nevertheless, as to the estate of the said

said *A. B.* and his heirs, in trust for your orator, his heirs and assigns; subject nevertheless to a proviso or condition for redemption in the said indenture of release contained; if the said *P. J.* his heirs, executors, administrators or assigns, or any of them, should well and truly pay or cause to be paid unto your orator, his executors, administrators or assigns, at or in the \_\_\_\_\_ in the parish of \_\_\_\_\_ in the said county of \_\_\_\_\_, the full sum of \_\_\_\_\_ of lawful money of Great Britain at or upon the \_\_\_\_\_ day of \_\_\_\_\_ next ensuing the date thereof, and now long since past, without any deduction whatsoever, in manner set forth in the said indenture of release; And the said *P. J.* did in and by the said indenture of release, covenant and agree, to and with your orator and the said *A. B.* that he and the said *Q.* his wife should and would, before the end of Easter term next ensuing the day of the date of the said indenture of release, acknowledge and levy (and which was accordingly acknowledged and levied) in due form of law one fine *Sur conuzance de droit come ceo,* &c. to your orator and the said *A. B.* and the heirs of your orator, of the said manor, lands and premisses subject to such redemption as aforesaid; and the said *P. J.* did further covenant and agree, that the said manors, messuages, farms, lands, hereditaments and premisses thereby released as aforesaid, were free from all incumbrances, except and other than the said term of five hundred years, of and in the said manor and premisses, or the greatest part thereof, then vested in the said *L. M.* In trust for the said *P. J.* and his heirs, and to be disposed of and assigned as he or they should direct; which term the said *A. W.* did thereby direct and declare the said *L. M.* his executors and administrators, should stand possessed of and interested in, In trust only for your orator and the said *A. B.* and their heirs, to attend the inheritance of the same premisses, subject

to such redemption as aforesaid, with a covenant, that in case of failure of payment of the said sum of — according to the said proviso, your orator and the said A. B. might enter upon and enjoy the said mortgaged premisses, and the rents and profits thereof, without any interruption of the said P. J. his heirs or assigns, or any other person whatsoever [Here set forth the covenant for further assurance] as in and by the said indentures of lease and release duly executed by the said P. J. and Q. his wife, now in your orator's custody, and ready to be produced, as this honourable court shall direct; and to which your orator, as also to the record of the said fine, for greater certainty refers himself, may more fully and at large appear; And your orator charges, that the said sum of — or any part thereof, was not paid to your orator or any other person on his account according to the said proviso in the said indenture of release contained at the time therein mentioned, or at any other time; and your orator further sheweth unto your Lordship, that the said P. J. having a further occasion for money, did sometime in or about the latter end of February, or on the first of March 1734, again apply to your orator to lend him the further sum of —, and in order to secure the repayment of the same with interest after the rate of — by the hundred by the year, offered to charge the said mortgaged premisses therewith, which your orator consented to, and accordingly did advance, lend and pay to the said P. J. the said sum of —, and for securing the repayment thereof with interest as aforesaid, by an indorsement made upon the back of the said indenture of release, bearing date the first day of March 1734, reciting that the said principal sum of — remained wholly due and unpaid, but that all interest for the same was fully paid and satisfied to the day of the date thereof; and further reciting (and which your orator

orator expressly charges to be true) that the said *P. J.* by his bond or obligation bearing even date with the said indorsement was become bound to your orator in the penal sum of —— conditioned for the payment of the said sum of —— with interest for the same, after the rate of —— for every hundred pound on the first day of *September* then next ensuing, It is by the said indorsement witnessed, that for better securing the payment of the said sum of —— with interest for the same, after the rate of —— per cent. per annum to your orator, his executors, administrators and assigns, the said *P. J.* for himself, his heirs, executors and administrators, and for every of them, did thereby covenant, promise and agree, to and with your orator, his executors, administrators and assigns, and every of them, that the said sum of —— and interest, after the rate aforesaid, to be computed from the day of the date thereof, was and should be placed, charged and secured in and upon the manor, messuages, farms, lands, tenements and hereditaments comprised in the said indenture of release, and that the manor, messuages, farms, lands and hereditaments, with their and every of their appurtenances in the said indenture mentioned to be released to your orator and his heirs, should remain to your orator, his executors, administrators and assigns, a security as well for the said sum of —— and interest for the same, after the rate of —— for every hundred pound by the year, to be accounted from the day of the date thereof, as for the said sum of —— secured by the said indenture of release, and the growing interest thereof, after the rate of —— for every hundred pounds by the year; and that the said manor, messuages, farms, lands, tenements and hereditaments, or any of them, or any part thereof, should not be redeemed or redeemable until not only the said —— and the growing interest thereof as aforesaid,

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aforesaid, but also the said —— then advanced and lent, and the interest thereof as aforesaid, should be fully paid and satisfied to your orator, his executors, administrators or assigns, as in and by the said indorsement on the back of the said release, and the said bond duly executed by the said P. J. and to which your orator for greater certainty refers himself, may more fully and at large appear. And your orator further sheweth unto your Lordship, that the said sum of ——, or any part thereof, hath not been paid to your orator, neither was the said sum of ——, or any part thereof, paid to your orator according to the condition in the said in part recited bond at the time therein mentioned, or at any time since; but the said two several sums of —— and —— are now due and owing to your orator, together with a great arrear of interest on the said several sums after the respective rates aforesaid; and the said A. B. being dead, the estate and interest in the said mortgaged premisses is now become absolute in your orator and his heirs, and your orator well hoped that the said P. J. would either have paid your orator the said several sums of —— and ——, and the interest thereof respectively at the rates aforesaid, or would have suffered your orator to have peaceably and quietly held and enjoyed the said premisses; and for that purpose your orator hath frequently and in a friendly manner applied himself to the said P. J. and requested him to pay the said several sums of —— and —— and the interest due for the same respectively, or else quietly and peaceably to deliver up possession to your orator of the said mortgaged premisses, together with all deeds, evidences, writings, escripts, and muniments, court-rolls, rent-rolls, and minutes of courts relating to or concerning the same; and to release all his right, title and equity of redemption of, and to the same premisses to your orator and his heirs

heirs; the said *P. J.* well knowing (as your orator charges the truth to be that the said premises are a very slender and scanty security for the principal and interest now due to your orator thereon; And your orator well hoped the said *P. J.* would have complied with such reasonable request of your orator, as in justice and equity he ought to have done: But now so it is, may it please your Lordship, That the said *P. J.* combining and confederating himself to and with the said *L. M.* and divers other persons, at present unknown to your orator, whose names, when discovered, your orator prays may be made parties hereto, with proper and apt words to charge them, now to injure and aggrieve your orator in the premises, and to defraud him of the said principal monies and interest due to him; sometimes gives out and pretends, that the said premises were mortgaged by the said *P. J.* to the said *L. M.* for the said term of 500 years, for securing to him some very considerable sum of money; and that at the time such mortgage was made to your orator as aforesaid, he the said *P. J.* had only the equity of redemption of the same; whereas your orator expressly charges (as the truth really is) that no money was due to the said *L. M.* on such term, but that the said *L. M.* is seised of the said term of 500 years, and his name made use of barely as a trustee; and the said term is now vested in him, in trust for your orator and his heirs, to attend the inheritance of the said premises; nevertheless the said *L. M.* refuses to let your orator bring an ejectment, in his name, for recovery of the premises comprised in the said 500 years term; and at other times the said *P. J.* pretends that he hath confessed judgments, statutes and recognizances to several persons for several considerable sums of money, and made several other grants, conveyances, and secret incumbrances, which will affect the said premises, prior to your orator's title

to

to the same, but refuses to discover the same, or to whom he hath so sold, mortgaged or incumbered the premisses as aforesaid, or the respective considerations thereof, or the persons to whom he hath confessed such judgments, statutes, or recognizances, and for what sums and what consideration, so that your orator cannot proceed at law for recovery of the said mortgaged premisses, the said P. J. threatening, in case your orator proceeds at law, to set up the said incumbrances, and the said trust-term of 500 years in the said L. M. All which they pretend are prior to your orator's said mortgage; whereas your orator charges, that such conveyances, mortgages or other incumbrances (except the said trust-term) are not prior to your orator's said mortgage (if any such there be) or if any of them are prior to your orator's said mortgage, the same are voluntary and fraudulent, and made without any consideration really and truly paid, and such judgments, statutes and recognizances, were not for the payment of any just debt, but without any consideration, and voluntary, and contrived on purpose to defraud the just creditors of the said P. J. All which actings and doings are contrary to equity and good conscience, and tend to your orator's manifest wrong and injury. In tender consideration whereof, and forasmuch as your orator hath no means to discover what incumbrances there are upon the said mortgaged premisses, or can foreclose the equity of redemption thereof, but in a court of equity where matters of this nature are properly cognizable, and the rather for that your orator's witnesses, who could prove the truth of all and singular the premisses, are either dead or gone into parts beyond the seas intirely unknown to your orator; To the end therefore, that the said P. J. and L. M. and their confederates (when discovered) may,

may, upon their several and respective corporal oaths, true, full, and perfect answer make to all and singular the premisses, as fully and particularly as if the same were herein again repeated and they interrogated, according to the best of their respective knowledge, information, or belief; and more particularly whether the said *P. J.* was not, in or about the year 1727. or at some other and what time, and when, seised in fee, or of some other, and what estate of and in the manor, messuages, farms, lands, tenements, hereditaments, and premisses herein beforementioned, or some and which of them, and whether he did not apply to your orator to borrow the sum of — or some other, and what sum of money, and propose to secure it with interest as aforesaid, in the manner herein before-mentioned, or in any other, and what manner, and whether your orator did not accordingly advance, and lend to him the said *P. J.* the said sum of — and whether the said *P. J.* and *Q.*, his wife, did not execute such indentures of lease and release bearing date respectively the twentieth and twenty-first days of *April* 1727. or some other and what indentures of mortgage of the said premisses to your orator, or of any other and what date, and whether the said trust-term of 500 years was not thereby declared and agreed, or how otherwise intended to be vested in the said *L. M.* in trust for your orator and his heirs, to attend and wait upon the inheritance of the said premisses, or for any other, and what trust or purpose, and whether the said *P. J.* did not again, some time in the year 1734. apply to your orator to borrow the further sum of — or some other and what sum of mohey, and whether your orator did not advance and lend to the said *P. J.* the said sum of — and whether, for securing the repayment thereof with the interest as aforesaid, the said *P. J.* did

## Bills and Answers.

did not execute such bond of such date as is before set forth, or some other and what bond of the same, or any other, and what date, and whether he did not execute such indorsement on the back of the said release, as is before set forth, bearing date the first of *March 1734.* or some other, and what indorsement or instrument in writing of the same, or such like date, tenor, purport or effect, and may admit the said several indentures of lease and release dated the twentieth and twenty-first of *April 1727.* and the said bond and indorsement made on the back of the said release, dated the first day of *March 1734.* and the payment of the several considerations thereof to be in the same manner they are herein before respectively set forth, or may set forth wherein they materially differ, and may set forth whether the said several sums of —— and —— or any part of either of them, hath at any time, and when, been paid by any person, and by whom, to your orator, and may set forth how much is now due to your orator for principal and interest on his said several securities, and may set forth what incumbrances there are upon the said mortgaged premises, and when, and by whom the same were charged or encumbered, and who claim the same respectively, and may set forth the nature and kinds thereof, and whether the same are by absolute sale, mortgage, statute-merchant, statute-staple, judgments, recognizances, or how otherwise, and the dates, tenor and short contents of such several incumbrances and of the deeds, records or other instruments or writings treating or relating to the same, and may set forth the respective considerations thereof, and when, where, and in whose presence such considerations were respectively paid, and whether in specie bills, or how otherwise, and whether the said incumbrances, or any, and which of them are now unpaid and unsatisfied, and how much money

no

now due on the same respectively, and that the said P. J. may be decreed to pay and satisfy to your orator the said several sums of — and — and all interest due and to grow due thereon after the respective rates aforesaid, by a short day to be appointed by this honourable court, together with your orator's costs; and in default thereof, that the said P. J. and all persons claiming under him, may be foreclosed of and from all equity of redemption or claim, in and to the said mortgaged premisses, and every part thereof, and may deliver over to your orator all deeds, charters, evidences, writings, muniments, court-rolls, rent-rolls, and minutes of courts whatsoever, relating to or concerning the said manor, messuages, farms, lands, tenements, hereditaments and premisses; and that the said L. M. may set forth what right or title he hath or claimeth of and in the said premisses, or any and what part thereof, and whether he is not a trustee for your orator, and why he refuses to let your orator bring an ejectment in his name; in order to recover possession of the said premisses and that the said term of 500 years may be declared to be in trust for your orator and his heirs, to attend the inheritance of the said premisses, and that your orator may have such further and other relief in the premisses, as to your Lordship shall seem proper, and shall be agreeable to equity and good conscience. May it please your Lordship, &c.

*A bill brought by an infant by his next friend against executors for a legacy.*

*To the Right Honourable, &c.*

HUMBL Y complaining sheweth unto your Lordship your orator J. W. son of J. W. of D. in the county of K. mariner, an infant under the

the age of twenty-one years, to wit, of about the age of six years, by his said father and next friend, that *J. W.* of *T.* in the county of *Y.* Gent. being seised and possessed of a very considerable real and personal estate, did, on or about the fourth day of *March* in the year of our Lord 1742. duly make and publish his last will and testament in writing; and thereby, amongst other things, devised and bequeathed as follows: [*bere cite the devise in the will*] And that upon or soon after the death of the said testator, to wit, on or about the day of the said *E.* and *W. W.* (*the executors named in the will*) duly proved the said will in the prerogative court of *York*, and took upon themselves the burthen and execution thereof; and by virtue thereof possessed themselves of all the said testator's real and personal estate, goods, chattels and effects, to the amount of ten thousand pounds and upwards: And your orator further sheweth unto your Lordship, that he hath by his said father and next friend, several times since his said legacy of three hundred pounds was due, applied to the said *E.* and *W. W.* to have the same paid or secured for your orator's benefit; and your orator well hoped that the said *E.* and *W. W.* would have complied therewith, without suit, as in conscience and equity they ought to have done. *But now so it is, may it please your Lordship,* that the said *E.* and *W. W.* combining and confederating together to and with divers other persons, as yet to your orator unknown, whose names, when discovered, your orator prays may be herein inserted as defendants, and they made parties hereto, with apt words to charge them, now to injure and oppress your orator, the said confederates respectively do now absolutely refuse to pay or secure the payment of your orator's said legacy, sometimes pretending that the said testator did not make

make any such will; and at other times they admit that the said testator made such will, and that they have proved the same, and possessed themselves of all his real and personal estate; but then they pretend that the same was very small and inconsiderable, and not near sufficient to pay and satisfy his the said testator's just debts, legacies and funeral expences, and that they have applied and disposed of the same towards satisfaction thereof; and at the same time the said confederates do respectively refuse to set forth and discover what such real and personal estate was, or the particulars whereof the same consisted, or the value thereof, or how much thereof they have so applied, and to whom, and for what paid, or what is become thereof particularly; whereas your orator doth charge the truth to be that the said testator died possessed of such real and personal estate to the full value aforesaid; and which was much more than would pay all his the said testator's just debts, legacies and funeral expences; and the said confederates or one of them have possessed and converted the same to their own uses, without making any satisfaction to your orator for his said legacy. All which actings, pretences and doings of the said confederates are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator: In tender consideration whereof, and for that your orator is reme-  
dies in the premisses, at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this nature are properly cognizable; To the end therefore, that the said confederates may respectively, full, true, direct, and perfect answer make, upon their respective corporal oaths, according to the best of their respective knowledge, information and belief, to all and singular the matters and charges aforesaid, as fully in every respect, as if the same were here again re-

peated and they thereunto particularly interrogated, and more especially that they may respectively set forth and discover, according to the best of their knowledge, remembrance, information and belief, whether the said testator J. W. duly made and executed such last will and testament in writing, of such date, and to such purport and effect as aforesaid, and thereby bequeathed to your orator such legacy of three hundred pounds as aforesaid, or any other, and what last will, of any other, and what date, and to any other, and what purport or effect particularly, and that they may produce the same, or the probate thereof, to this honourable court, as often as there shall be occasion; and whether by such will or any other, and what will, the said testator appointed any and what other executors by name, and when the said testator died, and whether he revoked or altered the said will before his death and when, and before whom, and in what manner, and whether the said confederates, or one, and which of them, proved the said will, and when, and in what court, and that they may respectively set forth whether your orator, by his said father and next friend, hath not several times, since his said legacy was payable, applied to them to have the same paid or secured to be paid for his benefit, or to that effect; and whether the said confederates or one, and which of them, refused or neglected to comply with such your orator's requests, and for what reasons respectively, and whether such refusal is grounded upon the pretences herein before charged, or any, and which of them, or any other, and what pretences particularly, and that the said confederates may admit assets of their said testator come to their hands sufficient to satisfy your orator's said legacy, and subject thereto, or otherwise may set forth a particular account of the real and personal estate, goods and effects of which the said testator

testator died possessed or intitled unto, and the particulars whereof the same consisted and the values thereof, and how much thereof they have applied in discharge of his the said testator's debts, legacies and funeral expences, and to whom, and for what paid and what is become thereof particularly, and whether the said testator did not die possessed of real and personal estates, goods and effects to the value of ten thousand pounds, or what other value, and whether the same was not much more than would pay all his just debts, legacies and funeral expences, and that they may also set forth a just and true account of all such debts and sums of money as were really due and owing, by and from their said testator, at the time of his death, and to whom by name, and on what security or securities, and how, and on what account such debts were respectively contracted, and which of them now remain unpaid and unsatisfied; and that they may be compelled by a decree of this honourable court to pay your orator's said legacy of three hundred pounds, and that the same may be placed out at interest for your orator's benefit, until your orator attains his age of twenty-one years, and that the said three hundred pounds may then be paid him, and that, in the mean time, the interest thereof may be paid to your orator's said father J. W. towards the maintenance of your orator; and that your orator may have such further and other relief in the premisses as the nature of this case shall require, and as to your Lordship shall seem meet. May it please your Lordship, &c.

*To the Right Honourable Edward Lord Thurloe,  
Baron of Ashfield in the county of Suffolk, Lord  
High Chancellor, &c.*

Humbly complaining, sheweth unto your Lordship our orators A. B. of, &c. and C. D. of, &c.

## Bills and Answers.

that, &c. (setting forth the former bill as in the decretal order;) and thereupon the defendants answered, and the plaintiff replied, and witnesses were examined, and their depositions published, &c. that the cause came on to hearing, and was heard and decreed by the Lord-Chancellor C. after which, &c. petitioned for a rehearing to the Lord Chancellor, &c. And the cause was accordingly reheard, and a decree for reversal was made by his Lordship; (prout the decree) and that decree is signed and inrolled in this court; but your orators do aver and say, that they are aggrieved by the said last decree, and that they ought not to be bound thereby, nor should any such decree have been made or pronounced against your orators; neither ought your orators to pay, &c. as by the said decree is appointed; and that the same decree is erroneous, and ought to be reversed; and for error do, according to the course of this honourable court, assign the errors therein as followeth: First, Your orators say, and hope to maintain, that, &c. which is altogether uncertain, &c. Secondly, That, &c. which appears by, &c. to be fraudulent and corrupt. Thirdly, That, &c. was not alive at the time of the said decree made in the said cause against your orators, and so could not be bound by the said decree; and consequently your orators ought not to be bound thereby; for all which said error and imperfections in the said decree your orators have brought this their said bill of review; and humbly conceive they should be relieved therein. In tender consideration whereof, and for that there are divers other errors and imperfections in the said decree and proceedings, by reason whereof the same ought to be reviewed and reversed; and that the first decree made by, &c. ought to stand and be confirmed, &c. To the end therefore, that the said last decree, and all the proceedings thereupon

may

may be reviewed and reversed, added, &c. and that the said, &c. may answer the premises; and that your orators may be relieved in all and singular the premises according to equity and good conscience, &c. May it please your Lordship to grant your orators his majesty's writ of *subpœna* to revive and answer, directed to, &c. commanding them, &c.

JOHN MADOCKS.

The answer to the foregoing bill, submitting to pay the legacy under the indemnity of this court.

The joint and several answers of E. W. and W. W. gent. defendants, to the bill of complaint of J. W. an infant, by J. W. his father and next friend, complainant.

THESE defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the manifold errors and insufficiencies in the complainant's said bill contained, for answer thereto, or so much thereof as these defendants are advised is material for them to make answer unto, they answer and say, they do admit that J. W. in the bill named, their late father deceased, did duly make and execute such last will and testament in writing in such date and to such purport and effect, and did thereby bequeath to the complainant J. W. such legacy of three hundred pounds in the words in the bill for that purpose mentioned, or in words to the like purport or effect; And these defendants further answering say, they do admit that the said testator J. W. did by such will appoint these defendants E. W. and W. W. executors thereof, and that

the said testator died on or about the sixth day of March 1742 without revoking or altering the said will; and these defendants further answering say, that they do admit that they, these defendants, some time afterwards, to wit about the month of April or May 1743 did duly prove the said will in the ecclesiastical court of York, and did take upon themselves the burthen of the execution thereof, and now have the probate of the said will in their custody ready to produce as this honourable court shall direct; and these defendants further answering do admit, that the said complainant J. W. by his said father and next friend did several times apply to them the said defendants (since the said legacy was payable,) to have the same paid or secured for the benefit of the said complainant, which the defendants declined in regard the said complainant is an infant, and therefore these defendants (as they were advised) could not be safe in making such payments or in securing the said legacy, but by the order and direction, and under the sanction of a decree of this honourable court; and these defendants further answering say, that by virtue of the said will of the said testator they did seise and possess themselves of the real and personal estate, goods, chattels and effects of the said testator, to a considerable amount, and do admit that assets of their said testator are come to their hands sufficient to satisfy the complainant's said legacy, and which assets they admit to be subject to the payment thereof, and are willing and desirous, and do hereby offer to pay the same as this honourable court shall direct, being indemnified therein; and these defendants deny all unlawful combination or confederacy in the said bill charged, without that, that there is any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered unto,

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confessed or avoided, traversed or denied, is true:  
All which, &c.

*A bill in Chancery brought by an intestate's two daughters to call the widow to an account for the personal and real estate.*

HUMBLY complaining, shew unto your Lordship, your oratrixes M. D. and E. D. of \_\_\_\_\_ in the county of \_\_\_\_\_, spinsters, daughters and coheirs of W. D. late of \_\_\_\_\_ aforesaid, Esq; your oratrixes being infants under the age of twenty-one years, viz. your oratrix M. of the age of seventeen years or thereabouts, your oratrix E. of the age of sixteen years or thereabouts, by Sir S. A. of \_\_\_\_\_ in the parish of \_\_\_\_\_, knight, their next friend, and the said W. D. your oratrix's late father, was in his life-time, and at the time of his death, seised in fee or of some other good estate of inheritance, of and in divers messuages, tenements and lands, with the appurtenances, in the city of \_\_\_\_\_, and also of and in the manor of \_\_\_\_\_, and of and in the messuages, lands, tenements and hereditaments thereunto belonging or thereto adjoining, with the rents, members and appurtenances thereunto belonging, and also of and in several manors, and divers lands, tenements and hereditaments, with the appurtehances, in \_\_\_\_\_ and elsewhere in the kingdom of \_\_\_\_\_ of the yearly value in the whole of two thousand pounds and upwards, or other considerable yearly value, and that the said W. D. your oratrixes said late father, was also in his life-time, and at the time of his death, possessed of, interested in, or intitled unto several goods and chattels real and personal, leases for years, and leases determinable on lives, ready monies, plate, household goods, a great stock

of cattle, horses, implements of husbandry, and other personal estate, amounting in the whole to the sum of one thousand pounds or other considerable value; and your oratrixes further shew, that your oratrixes said late father being so seised and possessed of and in such real and personal estate as aforesaid; on or about the \_\_\_\_\_ day of \_\_\_\_\_ died intestate, leaving D. D. his widow and relict (your oratrixes mother) and your oratrixes his only daughters and coheirs, and of such ages as aforesaid; And your oratrixes further shew unto your Lordship, that on the death of your oratrixes said late father, the said messuages, lands, tenements and premises, whereof he died seised as aforesaid, descended, remained or came to your oratrixes as his daughters and coheirs, subject only to the right of dower or jointure of the said D. D. your oratrixes said mother, in and to the same during her life; and by virtue of the statute for settling intestates estates, the clear personal estate of the said intestate your oratrixes said father, after debts and funeral charges paid and satisfied, ought to be distributed into three equal parts or shares, whereof the said D. D. your oratrixes said mother is intitled to one third, and the other two third parts of the said personal estate ought to be equally divided between your oratrixes, being the only children of their said father living at his death; And your oratrixes further shew, that on their said father's death the said D. D. your oratrixes said mother, as guardian to your oratrixes, or otherwise in their right or on their behalf, entered and possessed herself of all and singular the said real estate of your oratrixes said father, and hath ever since his death received and took the rents, fines, issues and profits thereof, and also raised considerable sums of money by and out of the said coal-pits within the premisses; and she the said D. D. your oratrixes said mother, also

also obtained letters of administration to be granted to her out of the prerogative court of Canterbury of the said intestate your oratrixes said father's personal estate, and by virtue thereof your oratrixes said mother possessed herself of the said intestate's goods, chattels and personal estate of such great value as aforesaid, or other great value, and hath sold or disposed of the same, and raised great sums of money thereby, to two third parts or shares whereof your oratrixes are intitled as aforesaid; and the said D. D. your oratrixes said mother, having so entered upon and possessed herself of your oratrixes said father's real and personal estate as aforesaid, and thereout and thereby raised and received great and considerable sums of money, your oratrixes well hoped their said mother would have come to a fair and just account with your oratrixes touching the same, and have paid and answered to your oratrixes what should appear justly due to them in respect of the premises, and that the money so due and belonging to your oratrixes, as aforesaid, should have been from time to time put out and improved for your oratrixes best benefit and advantage, as the same ought in equity and justice to be: But now so it is, may it please your Lordship, that the said D. D. your oratrixes mother, combining and confederating herself with divers persons unknown to your oratrixes, whose names when discovered your oratrixes pray may be made parties to this bill, with apt words to charge them; In order to defraud and defeat your oratrixes in the premises, and having possessed herself of all the deeds and writings concerning your oratrixes said father's estate, she the said D. D. your oratrixes said mother (though in a dutiful manner requested thereto by your oratrixes) refuseth to come to any account with your oratrixes touching the rents, issues or profits of their said father's real estate, or the particulars

or values of the said intestate's personal estate, or how she the said D. D. your oratrixes said mother hath administered or disposed of the same, and hath not as yet exhibited any inventory thereof (in the prerogative court of *Canterbury* as she ought to have done) your oratrixes said mother sometimes pretending that your oratrixes being infants, she need not account with them during their minorities, and that your oratrixes said father was at his death indebted to divers persons on mortgages, judgments, and other real securities, and that she your oratrixes said mother hath paid considerable sums of money in or towards the discharge or satisfaction thereof, and that she is intitled to her dower out of your oratrixes said father's real estate, or otherwise to a jointure on the same or some part thereof, for payment of a yearly sum of money to her during her life, or to some such effect, and yet refuses to discover the same; and your oratrixes said mother also pretends that your oratrixes said father's personal estate was not considerable, or not of such real value as aforesaid, and that your oratrixes said father was at his death indebted on bonds, securities, book-debts, debts by simple contract and otherwise, to several persons in considerable sums of money, in or towards satisfaction of which she hath applied the same, and that if any surplus money did or should remain in her hands on her accounts due to your oratrixes in respect of their said father's real and personal estates, that she cannot take upon her to put out such monies or any part thereof at interest, or otherwise improve the same, without the direction and decree of this honourable court for so doing; and your oratrixes said mother refuses to come to an account with your oratrixes touching the premisses, or pay and dispose the monies due to your oratrixes thereon for your oratrixes benefit and advantage, as she ought in justice and equity to do.

do. All which doings of the said D.D. &c. In  
tender, &c. To the end therefore that the said D.  
D. your oratrixes said mother may true and per-  
fect answer make to all and singular the premisses  
as fully as if the same were herein again particularly  
repeated and interrogated, and particularly may set  
forth and discover what manors, messuages, lands,  
tenements or hereditaments your oratrixes said fa-  
ther, or any in trust for him, was seised or possessed  
of at the death of your oratrixes said father, and  
where the same lie, and may set forth a true rental  
or other yearly value thereof, and what rents, is-  
sues or profits of the same, she, or any person or  
persons by her order, privity or knowledge, of or  
for her use, have or hath had, received or taken  
since the death of your oratrixes said father; and  
may also set forth a particular account when and of  
whom she received the same, and what sum or sums  
of money she hath really and *bona fide* paid, dis-  
bursed or allowed out of or in respect of your orat-  
rixes said father's said estate, or any and what  
parts thereof, and the times when, and the persons  
to whom, and for what and on what account she  
paid and allowed the same; and may also set forth  
and discover what estate, right, title or interest she  
your oratrixes said mother hath or pretends to claim  
in or to your oratrixes said father's estate, or any  
and what parts thereof, either for or upon account  
of her dower, jointure or otherwise, and by what  
deed, settlement or conveyance she hath or claims  
any jointure or other provision (if any such there  
be) out of the said estate and premisses, and when  
and upon what consideration really and *bona fide* such  
settlement or conveyance (if any such there be) was  
made; and also what deeds, evidences and writings  
your oratrixes said mother hath in her custody or  
power concerning the said estate and premisses, and  
may discover and produce the same as this honour-

able

able court shall think fit and direct; and that your oratrixes said mother may also set forth what personal estate your oratrixes said father died possessed of, interested in, or intitled unto, and may set forth a true and perfect inventory or account thereof, and the fair and true values of the same, and what part thereof hath come to her hands, power or possession, and the particulars, kinds, and true values of such parts of the same as hath come to her hands, possession, power, privity or knowledge, or of any person or persons in trust for her, and how she hath administered and disposed of the same, and what parts thereof she hath sold, and to whom, and for how much, or at what values, and if the same were the full and true values thereof respectively, and what sum or sums of money your oratrixes said mother hath at any time or times, and when, and of whom had or received, or raised thereby, and how she hath paid and applied the same, or any and what parts thereof, and when and to whom, and for what and upon what account, and when such payments as she hath made out of, or in respect of the said personal estate for debts due from the intestate, or otherwise, were all and every part thereof really and *bona fide* made by your oratrixes said mother, and whether the monies by her brought to her account, to be paid out of or on account of the said personal estate, were really and *bona fide* paid by her accordingly, and what part of the said personal estate is yet standing out and undisposed of, and the particulars, kinds, and true values thereof; and that your oratrixes said mother may come to a fair and just account with your oratrixes as well touching their said father's real and personal estate, and what is due and of right belonging to your oratrixes out of the same respectively, and that the clear surplus of the monies on such accounts due and belonging to your oratrixes, may be applied and disposed of

for

for your oratrixes benefit and advantage, by putting out the same at interest, or otherwise improved as this honourable court shall think fit, and your oratrixes be relieved in all and singular the premisses according to equity and good conscience. May it, &c.

*A bill to discover a title, and set aside a recovery and will suffered and made by a lunatick, by one coheiress against another, and that a mortgage made by the defendant may affect her part only, and to be relieved with regard to a partnership debt, the partnership being dissolved.*

*To the Right Honourable, &c.*

HUMBLY complaining shew unto your Lordship your orator and oratrix J. S. of the parish of —— in the county of ——, and E. his wife, which said E. was one of the daughters and coheirs of C. W. late of —— in the county of —— widow deceased, and likewise one of the sisters and coheirs of J. W. late of —— aforesaid, gentleman, deceased, That the said C. W. being seised and possessed of divers lands, tenements and hereditaments in fee-simple, situate, lying and being at —— aforesaid, of the yearly value of ——, or thereabouts; and being minded to make some provision for her family, she by some deed or instrument duly executed by her, conveyed and settled the same in the manner following, *to wit*, To herself for life without impeachment of waste, and from and after her decease to the said J. her eldest son, and the heirs male of his body; and from and after his decease without issue male, to T. W. her other son, and the heirs male of his body, and for default of

of issue male of the said *T.* then to her own right heirs, as in and by the said deed or instrument of settlement, had your orator and oratrix the same to produce, and to which for greater certainty therein your orator and oratrix crave leave to refer, doth more fully and at large appear; And your orator and oratrix further shew unto your Lordship, that some short time after she had executed the said settlement as aforesaid, *to wit*, in the year 1711. she the said *C. W.* departed this life leaving issue the said *J.* and *T. W.* her said two sons and five daughters, namely, *A. M.* your oratrix *E. C.* and *S.* and that the said *J.* being tenant in tail of the said premises, he thereupon entered upon the same, and took possession thereof, and held and enjoyed the same home to the time of his death; And your orator and oratrix further shew unto your Lordship, that the said *T. W.* and *S. W.* respectively died unmarried in the life-time of the said *J.* and that the said *J.* departed this life on or about the twenty second day of November 1739. unmarried and without any issue of his body, and that he did no act in his life-time whereby the said estate-tail became docked, or the remainders in the said settlement barred, and that by means thereof the said premises on his death by the said settlement became vested in the said *A. M.* your oratrix and *C.* the four surviving daughters of the said *C. W.* as her right heirs, and ought to be held and enjoyed in copartnership by them; And your orator and oratrix further shew unto your Lordship, that immediately upon the death of the said *J. W.* the said *A.* your oratrix's said eldest sister, under pretence that she was thereunto privileged by priority of birth, entered into and took possession of the said premises, and hath enjoyed the same, and taken the rents and profits thereof to her own use ever since; And your orator and oratrix further shew unto your Lordship, that before your orator's intermarriage with

with the said *E.* his said wife, a partnership in trade had been entered into and carried on for seven years by and between the said *A.* and his said wife, that during the said partnership the sum of — was borrowed of Mrs. *S. W.* of — in the county of —, a defendant herein after named on the said partnership account; That upon his concluding the treaty of marriage with the said *E.* the said *A.* agreed that she would retain the said partnership effects to her own use, and in consideration thereof would take the payment of the said — to the said Mrs. *W.* on herself, and would alone become responsible to her for the same, and that in consequence thereof, upon their said marriage, an instrument or writing was executed between them for discharging the said partnership, and for the said *A.*'s indemnifying your orator from the said — so borrowed of the said Mrs. *W.* as aforesaid; and the said *A.* having fraudulently got the said instrument or writing into her custody or power, refuses to produce the same, intending, by her concealment thereof, to retain the said partnership effects to her own use, and to throw the burthen of the said debt upon your orator; And your orator and oratrix charge, that on the said discharge or dissolution of the said partnership between the said *A.* and your oratrix, the said partners were possessed of a very considerable stock in trade, and divers considerable debts were standing out and owing from several persons to the said partnership, amounting to a very great value, all or the greatest part whereof the said *A.* hath either caused to be got in for her use, or hath personally received the same; and your orator being intitled in the right of his said wife to one fourth or quarter part of the said premises, and also to a moiety of the said partnership effects as aforesaid, he hath often applied to the said *A. W.* and in a friendly manner intreated her to let him into the possession thereof, and to account with him

him for the rents and profits thereof from the death of the said *J. W.* and to pay the said debt so due to the said Mrs. *W.* as aforesaid, or otherwise to deliver up the said instrument or writing to your orator, that he may thereby be unable to do himself right in case he should be sued for the same, or to account with him for a moiety of the said partnership effects; and your orator well hoped, that the said *A.* knowing that your orator was well intitled thereunto as aforesaid, would have complied with your orator's request, as in justice and equity she ought to have done: But now so it is, may it please your Lordship, that the said *A. W.* combining and confederating herself to and with the said *S. W.* and to and with diverse other persons, at present unknown to your orator and oratrix, whose names, when discovered, your orator and oratrix humbly pray may be inserted in this their bill of complaint, with apt words to charge them as parties hereunto, now to defeat your orator and oratrix of the said fourth or quarter part of the said premisses so come to your oratrix as aforesaid; and to load your orator with the said partnership debt, so due and owing to the said *S. W.* she the said *A.* pretends, and gives out in speeches, that she is well intitled to the whole premisses, by virtue of some devise or general words in the will of her said mother, and that her said mother *C. W.* never made any such settlement thereof, as is herein before set forth; at other times she admits, that the said *C. W.* did duly execute such settlement; and that the said *J.* upon her death, entered upon the said premisses, and enjoyed the same as tenant in tail thereof, and that he, by fine and recovery levied and suffered by him, docked the said entail, and barred the said remainders, and by indentures leading the respective uses thereof had declared the same to be the use of himself and his heirs for ever, and that being by

means

means thereof seised of an absolute estate in fee-simple in the said premisses, he, by his last will and testament in writing, duly executed, and bearing date on or about the twenty-sixth day of *August* 1725. gave and bequeathed unto the said *A.* the sum of      and to all his other sisters the sum of      a-piece, and to one Mrs. *C. S.* the sum of      and devised the remainder of his estate, whether real or personal, unto the said *A.* and her heirs for ever, and that she therefore claims the said whole premisses, under the will of her said brother *J. W.* who she insists had full power to dispose thereof as he thought proper; whereas your orator and oratrix charge, and doubt not but they shall be able to prove the same to be true, that the said *J. W.* was utterly incapable of levying any fine, or suffering any recovery in order to dock the said intail, and bar the said remainders so limited by the said settlement as aforesaid, or of making any will to dispose of his real estate, if any such he was intitled to, other than as aforesaid; he the said *J. W.* having been a lunatick without any lucid interval from his age of twelve years and continued so to the time of his death; and your orator and oratrix charge, that if it shall appear that the said *J. W.* had an estate in fee-simple in the said premisses, which your orator and oratrix by no means admit, yet that for the reason last mentioned, he could by no means lawfully dispose thereof, either by will or otherwise, but the same are descended and come to his said four sisters *A. M. E.* and *C.* as his heirs at law; and that your orator in the right of his said wife is thereby become intitled unto one fourth or quarter part thereof, and ought to be put in possession of the same, and to have an account of the rents and profits thereof from the death of the said *J. W.* her said brother; at other times she the said *A.* denies that any sum of money whatsoever was borrowed of the said *S. W.* by her and your oratrix

E. on the said partnership account, or that any instrument or writing was executed by her upon your orator and oratrix's said intermarriage, to indemnify your orator therefrom, but insists that the said sum of \_\_\_\_\_ was the sole and separate debt of your oratrix E. and borrowed for her own use independent of the said partnership, and being in possession of the said instrument or writing, sets your orator at defiance as to any remedy he can have against her for the same, or any part thereof; and the said S. W. knowing that the said A. conceals and secretes the said instrument or writing, and confederating with her how to oppress your orator therein, threatens to sue your orator for the same, and to compel him to make payment thereof; and the said S. W. admits the same to be the sole and proper debt of the said A. although your oratrix became a joint security with her for the same, or otherwise that the same was borrowed on the said partnership account, and that she by virtue of the said agreement between her and your orator, and for the considerations aforesaid, had taken the same upon herself, and hath often acknowledged that she knew the circumstances of the said A. to be very good, and that she should rely singly upon her for the payment of the said money, or to that or the like effect; at other times the said A. pretends, that the said stock and effects of the said partnership was very trifling and inconsiderable at the time that the said partnership was so discharged or dissolved as aforesaid, and not an equivalent for her discharging or indemnifying your orator, from paying his share and proportion of the said debt, but denies that your orator in right of his said wife, is intitled to a moiety or any other part thereof whereas your orator and oratrix strictly charge, that the said partnership effects were of a considerable value, and the said A. very well knew the said agreement to be a very beneficial one on her part  
and

and hath often promised your orator and oratrix to perform the same, or to account with your orator for a moiety of the said partnership effects; at other times the said S. W. pretends and insists, that she has some mortgage or other incumbrance on the said premises at —— aforesaid, but refuses to discover to your orator and oratrix by whom the same was made or done, and for what sum or sums of money really and *bona fide* advanced and lent by her thereon: whereas your orator and oratrix charge, that if any such mortgage shall appear to be made or done, the same was made and done by the said A. solely since the death of the said J. and can only affect her interest in the said premises. All which actings, doings and pretences of the said confederates are contrary to equity and good conscience, and tend most apparently to your orator and oratrix's great injury and wrong: **In tender consideration** whereof, and forasmuch as your orator and oratrix are altogether remediless in the said premises at common law, and cannot be relieved therein but by the favourable aid and assistance of a court of equity, where matters of fraud and of this nature are properly to be discovered and inquired into, and the rather, for that your orator and oratrix's witnesses who would prove the truth of the said premises, are either dead or gone into parts remote and beyond the seas, and unknown to your orator and oratrix, by means whereof your orator and oratrix are derived of the benefit of their testimonies: **To the end** therefore, that the said A. W. and S. W. and the rest of the confederates, when discovered, may true, distinct and perfect answer respectively make to all and singular the matters and things herein and hereby charged, and that in as full and ample a manner as if the same were here again particularly repeated and interrogated; and that the

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said *A. W.* in particular may set forth and discover whether the said *C. W.* your oratrix's said late mother, was not seised in fee-simple, or how otherwise, of the said premisses at —— aforesaid, of the yearly value of —— or thereabouts, or of what other yearly value, and whether she did not make such settlement thereof as is herein before set forth, or any other and what settlement thereof, and of what date the same is, and of what kind and nature, and between what parties and by whom executed, and what are the names of the subscribing witnesses thereto, and in whose custody or power the same now is or late was, and when and whether the said *C. W.* is not since dead, and when she died, and what issue she left behind her at the time of her death, and whether immediately upon her death the said *J. W.* her eldest son as tenant in tail under the said settlement, or how otherwise, did not enter upon the said premisses, or any and what part thereof, and take possession thereof, and hold and enjoy the same to the time of his death; and whether the said *T. W.* and *S. W.* did not respectively die in the life-time of the said *J.* unmarried, and whether the said *J.* did not, at or about his age of twelve years, or at or about any other and what age, become a Junatick without any lucid interval, and whether he was at any time, and when afterwards, capable of levying any fine, or suffering any recovery to dock the said entail and bar the said remainders in the said settlement, and when and whether he was of sound mind and memory at the time when he made and executed his said will, and how long he had been so before the making and executing thereof, and whether he continued to be so any time afterwards and how long, and by whose advice was the same made and where, at what place, and about what time was such will made and executed, and who drew or prepared such will, and where did such person who drew

drew or prepared the said will, and the persons that were witnesses thereto at the time of drawing or preparing the said *J. W.*'s will and execution thereof, respectively live or reside, and where do such persons now live, lodge, reside, or may be met with or heard of, and whether the said *J. W.* is not since dead unmarried, and without issue, and whether the said *A. M.* your oratrix *E.* and *C.* are not the only daughters and right heirs of the said *C. W.* and the only sisters and heirs at law of the said *J. W.* and whether upon the death of the said *J.* and how long after, or when otherwise, she the said *A.* did not enter upon the said premises, and take possession thereof, and receive the rents and profits thereof, and why, and whether she doth not now continue in the reception thereof, and what is the clear yearly produce thereof, and whether your orator in the right of his said wife, is not now become intitled to one full fourth or quarter part of the said premises, and to a full fourth or quarter part of the rents and profits thereof from the death of the said *J. W.* or how otherwise, and whether previous to your orator's said intermarriage with his said wife, and how long, a partnership in trade was not entered into and carried on by and between the said *A.* and your orator's said wife, and during the said partnership the said sum of —— was not borrowed of the said other defendant Mrs. *S. W.* on the said partnership account, or how otherwise, and by whom and why, whether upon the said marriage being concluded between your orator and his wife, it was not agreed that the said *A.* should retain the said whole partnership effects to her own use, and that in consideration thereof she should take the payment of the said sum of —— on herself, and alone become responsible to the said *S. W.* for the same, and whether, in consequence thereof, an instrument or writing was not executed by and between them for discharging,

## Bills and Answers.

the said partnership, and for the said A.'s indemnifying your orator from the said sum of —, or to what other purport and effect, and of what date, and in whose custody or power the same now is, or late was, and when and how long it was since she last saw the same, and whether she doth not conceal and secrete the same, and why, and whether at the time of the said discharge or dissolution of the said partnership as aforesaid the said partners were not possessed of a very considerable stock in trade, and of what the same particularly consisted, and whether divers debts were not standing out and owing from several persons to the said partnership, and whether she hath not received, or cause to be received, all or the greatest part thereof, and to what value the said partnership effects in the whole amounted unto; and that the said S. W. may set forth and discover when and by whom the said sum of — was borrowed of her, and whether the same was not the sole and proper debt of the said A. W. although your orator became a joint security with her for the same; and whether, if the same was borrowed on the said partnership account, she hath not since acknowledged, and to whom, that she knew of the said instrument or writing's being executed by and between the said A. and your orator, and that for the consideration herein before mentioned the said A. had taken the same upon herself, and that she knew the said A.'s circumstances to be very good and should rely singly upon her for the payment of the said debt, or to that or the like effect; and whether she hath not since threatened to sue your orator for the same, and to compel him to make payment thereof, and why and whether she hath an mortgage, or other and what incumbrance on the said premises at — aforesaid, and by whom the same was made or done, and when and for what sum or sums of money really and *bona fide* advanced

and lent by her, and to whom; and that the said A. may produce the said settlement, or set forth the same *in baec verba* in her answer hereunto, and that the said will of the said S. W. may be declared to be null and void, and absolutely set aside as against your orator and oratrix, and your orator be put into the possession of one full fourth or quarter part of the said premisses in right of his said wife, and that the said A. may account with your orator and oratrix, and pay them one full fourth or quarter part of the rents and profits of this said premisses so received by her as aforesaid, and may likewise produce and deliver up to your orator the said instrument and writing so entered into between them as aforesaid, and further indemnify and save harmless your orator from the said debt of — so owing to the said S. W. as aforesaid, or may otherwise account with your orator for a moiety, of the said partnership effects, and pay and deliver over the same to your orator, and that the said mortgage or other incumbrance so made or done by the said A. W. to the said S. W. may be declared to affect the interest only of the said A. in the said premisses, and that the said S. W. may be restrained from proceeding at law against your orator for recovery of her said debt by injunction of this honourable court, and that your orator and oratrix may be further and otherwise relieved in the said premisses according to equity and good conscience, and as the nature and circumstances of their case shall require. May it please your Lordship, &c.

To the Right Honourable Edward Lord Thurloe, Baron of Tarmouth, in the County of Norfolk, Lord High Chancellor, &c.

HUMBL Y complaining, sheweth, &c. Your Certiorari orator A. B. &c. that whereas, &c. (setting <sup>bill,</sup>  
forth the cause prosecuted in the Lord Mayor's court)

All which said premises your orator hopes he shall make fully appear by several witnesses if need be, which he could not produce within the said city of *London* before the said Lord Mayor and his brethren the Aldermen of the city of *London*: Your orator shewing unto your Lordship, that one *E. F.* a material witness for your said orator concerning the said premises at the time of the cause, &c. then lived and resided, and still liveth and resideth at *Westminster*, without the jurisdiction of the said Lord Mayor and his brethren the Aldermen of the city of *London*, whereby your orator had no remedy to compel the said *E. F.* to be examined, or to give his testimony in the said cause in the city of *London* concerning the premises; *in tender consideration whereof*, and forasmuch as for want of jurisdiction in the said Lord Mayor and his brethren the Aldermen of the said city of *London* over your orator's witnesses, your orator is remediless there; and it being agreeable with the rules and practice of this honourable court, upon such necessities and defects of jurisdiction in inferior courts, for this high and honourable court, to remove the records and proceedings thereof into this honourable court, and to proceed in this court upon the same, and all other matters and things incident thereto, or whereupon your orator seeks relief. May it please your Lordship therefore, not only to grant unto your orator a writ of *Certiorari* to be directed to the said Lord Mayor of the city of *London*, and his brethren the Aldermen of the said city, thereby commanding them upon the receipt of the said writ to certify and remove the records of the said cause, &c. and all proceedings thereupon into this honourable court: But also to grant unto your orator his Majesty's most gracious writ of *subpæna* to be directed to the said *C. D.* &c. thereby commanding them and every of them at a certain day and under a cer-

a certain pain therein to be limited, personally to be and appear before your Lordship in the high and honourable court of Chancery, then and there upon their corporal oaths fully and directly to answer all and singular the premisses, and to set forth and discover whether, &c. and whether it was not declared and agreed, &c. and whether the said C. D. &c. be not indebted unto your said orator and in what sum, and that your said orator may be righted and relieved in all and singular the premisses according to equity and good conscience: And that the said defendants may stand to, observe and perform such order and decree therein, as your Lordship in your great wisdom shall think just and meet.

JOHN MADDOCKS.

*A bill in order to establish the custom of a manor.*

*To the Right Honourable, &c.*

HUMBL Y complaining shew unto your Lordship, your orator and oratrixes W. W. of, &c. in the county of —— Esq; and the honourable C. W. his wife, and the honourable M. G. spinster, that your oratrixes C. W. and M. G. are aunts and coheirs at law of the Right Honourable C. late Lord P. deceased, who at the time of his death (which happened on or about the twenty-second day of February which was in the year 1738.) was seised in fee, of and in the barony of —— and the manor of —— within the county of ——, and the rights, members and appurtenances belonging thereto, that upon the decease of the said late Lord P. (who died without issue male) the said premisses descended to, and became vested in, your oratrixes in

in fee as aunts and coheirs at law of the said lord *P.* And your orator *W. W.* in right of your oratrix *C.* his wife, and your oratrix *M. G.* now are, and ever since the decease of the said late Lord *P.* have been seised in fee, and in actual possession of the said barony and manor, and all the rights, members and appurtenances belonging to the same; and your orator and oratrixes further shew, that there are, and time out of mind have been, divers antient customary messuages, lands and tenements within and parcel of the said manors, and held of the same, and descendible from ancestor to heir, according to the custom of the said manor, and holden thereof under the payment to the lord or lady, for the time being, of the said manor, of certain antient yearly rents for the said customary messuages and tenements respectively, and of a fine upon every grant thereof, made by the lord or lady for the time being, of the said manor, to the tenants thereof respectively, and under payment of certain heriots, and doing suit and service at the courts of the said manor, according to the custom thereof; and your orator and oratrixes further shew, that the said customary messuages, lands and tenements respectively, are, and time out of mind, by the usage and custom of the said manor, have been grantable and granted by the lord or lady of the said manor for the time being, by deed executed by him or her, and by admittance thereupon made or granted by such lord or lady, or his or her steward for the time being, of the said manor; and more particularly your orator and oratrixes charge, that amongst other customary tenements, parcel and held of the said manor as aforesaid, there are, and time out of mind have been, an antient messuage, and two hundred acres of customary land called *K.* situate and lying within the said manor, which are, and time out of mind have been, a customary messuage, and lands, and parcel and holden

holder of the said manor as aforesaid, according to the custom thereof, and granted and grantable as aforesaid ; and that the same are now held by T. H. of D. in the county of C. and T. his wife, in her right, by and under such customary deed and admittance as aforesaid, according to the antient and laudable custom of tenant-right within the said manor; and your orator and oratrixes expressly charge, that the said deed and admittance now are in the custody or power of the said T. H. and T. his wife, or one of them ; and that by the antient usage and custom, time out of mind used and obtained within the said manor, no customary tenant of the said customary estate called K. or of any other of the customary lands, parcel and held of the said manor as aforesaid, has or have any right or title to fell or cut down any timber growing thereon, save and except for the necessary repairs of their respective customary tenements, and for necessary botes to be used upon their respective customary tenements ; and that only after such timber has been assigned and set out for that purpose by the bailiff or agent for the time being, of the then lord or lady of the said manor ; and that agreeable to the said last mentioned custom, and in confirmation thereof by the said deed or indenture of the said K. under which and the said admittance the same is now held as aforesaid, it is covenanted by the tenant or grantee therein named, for himself, his heirs and assigns, to and with the lord of the said manor, his heirs and assigns, that such grantee, his heirs or assigns, should not, nor would fall or cut down any timber on the said customary lands called K. so granted to him as aforesaid, or any part thereof, save for such necessary repairs and botes as aforesaid, by and after such assignment thereof to be made to him as aforesaid, as by the said deed and admittance, when produced to this honourable court, and to which your orator and oratrixes crave leave to refer, relation

tion being thereunto respectively had, may more fully appear: And your orator and oratrixes further shew, that there now is a great quantity of timber, and till lately, as herein after is mentioned, was a much greater quantity thereof growing or standing on the said customary lands called K. and that all such timber was and is respectively the property of and belongs to your orator and oratrixes as parcel of the freehold and inheritance of the said land whereon such timber grew or stood, or now grows, the freehold and fee of which lands are vested in your orator and oratrixes, as lord and ladies of the said manor aforesaid: But nevertheless so it is, may it please your Lordship, that the said T. H. and T. his wife having entered into combination and confederacy with divers other persons, as yet unknown to your orator and oratrixes, whose names, when discovered, your orator and oratrixes pray leave to insert in this their bill of complaint, with apt matter to charge them and every of them, as defendants hereto; with intent to injure your orator and oratrixes, and convert all the said timber to the use of the said T. H. and T. his wife; he the said T. H. did, in or about the month of July last, cause fifty-six oak timber trees of considerable value to be felled and cut down in and upon the said customary lands called K. without any licence or assignment by or from your orator or oratrixes, or by any bailiff or agent of theirs, or any of them for so doing; whereas your orator and oratrixes expressly charge, that by the custom of the said manor, and also by the said deed or indenture under which the said customary lands called K. are now held as aforesaid, the tenants and occupiers of the said customary lands called K. are expressly restrained from cutting, felling or taking any timber or wood in or upon the same, except for necessary repairs, and botes to be assigned them respectively as aforesaid; and you orato-

orator and oratrixes also charge, that the said timber and wood so cut down by the said T. H. or his order as aforesaid, was not, nor is necessary to be used in or for any repairs of or about the houses and buildings, or any of them, on the said customary tenement called K. or for necessary botes; and that, at the time the said timber or wood was so cut down as aforesaid, there was a considerable quantity of timber and wood lying upon the said lands and estate called K. which had been cut down by the said T. H. and T. his wife, or one of them, or their or one of their order, about three or four years ago, and which was more than sufficient for all the repairs of the buildings upon the said premisses, and for necessary botes to be used upon the same; and that there was not then, nor now is any occasion, on account of any repairs of or about the said premisses called K. or for necessary botes to be used upon the same premisses, to cut down any more or other timber or wood upon the same; notwithstanding which, the said T. H. not only refuses to make your orator and oratrixes satisfaction for the said timber and wood so cut down by him as aforesaid (altho' several times applied to for that purpose;) and your orator and oratrixes have offered, and do hereby offer to waive all penalties and forfeitures for cutting the same; but the said T. H. and T. his wife give out, that they will cut down all such other timber and wood upon the said premisses as they shall think fit. In consideration whereof, and forasmuch as your orator and oratrixes are remediless in the premisses, and cannot restrain the said T. H. and T. his wife from committing farther waste or spoils in the timber growing on the said lands and estate called K. nor can have a discovery of the quantities and value of the said timber so cut down as aforesaid, and compel the said T. H. to make your orator and oratrixes satis-

satisfaction for the same, without the aid and assistance of this honourable court; To the end therefore that the said T. H. and T. his wife may, and their confederates as discovered, upon their respective oaths, full, true and perfect answer make (to the best of their respective knowledge, information and belief,) to all and singular the matters and things herein before charged, as fully and particularly as if the same, and every of them, were here particularly repeated and they thereunto interrogated; and more especially that the said T. H. and T. his wife may set forth, whether your orator and oratrixes are not lord and ladies or owners of the said barony of L. and of the said manor of N. herein beforementioned, and whether, as such, they are not seised in fee or otherwise, and how, of and intitled to the freehold and foil of all the said customary lands called K. and all timber and wood standing or growing thereon, and whether the same are not now holden by the said T. H. and T. his wife, in her right or otherwise; and how, by and under such deed and admittance as herein before mentioned, or by or under what other right or title and whether such covenant or restriction concerning the cutting or felling of timber and wood as herein before is mentioned, is not contained therein, and whether they have any, and what right to cut down any, and what timber or wood, in or upon the said lands so held by them, except for the necessary repairs of the houses and buildings thereon, and for necessary botes, and that by and with the licence and assignment of the lord or lords of the said manor, or their bailiff or agent for the time being and whether there is not a considerable, or some what quantity of timber standing and growing upon the said customary estate called K. and of what value the same is, and whether the sole property thereof is not in your orator and oratrixes as aforesai-

and whether he the said T. H. and T. his wife, has or have, or pretend to have any and what right or title thereto, or to any, and what part thereof; and that they may set forth the deed and admittance, or other and what title they hold the said lands and estate called K. and whether the person to whom the same was granted, was not by such deed restrained from cutting or felling any timber upon the said customary estate (save as aforesaid;) and that the said T. H. and T. his wife may set forth, whether they, or one and which of them, did not in or about the month of July last, or at some, and what other time or times, cause fifty-six oak-trees, or some other, and what number of oak or other trees, and of how many years growth, to be cut down and fallen in and upon the said lands called K. and whether the same were not so cut or fallen without the licence or assignment of your orator and oratrixes, or any agent or bailiff of theirs, and without any assignment of any such bailiff or agent; and by what right, title, power or authority the same were so cut down or fallen; and that they may set forth the respective dimensions and values of each and every of the said trees so cut down by them or either of them, or by their or either of their order as aforesaid; and that he the said T. H. may account and make satisfaction to your orator and oratrixes for the same; and that the said T. H. and T. his wife, may be restrained by the order or injunction of this honourable court from felling or cutting down any timber or wood for the time to come in or upon the said lands held by them of the said manor as aforesaid, without the assignment of your orator and oratrixes, or their bailiff or agent; and that your orator and oratrixes may have such further and other relief in the premisses, as the nature of their case requires, and as shall be agreeable to equity and good conscience. May it please your Lordship, &c.

A bill

*A bill to open an account settled by the intestate,  
for fraud and duress.*

*To the Right Honourable, &c.*

HUMBL Y complaining shew unto your Lord-  
ship your orators C. C. only son and sole heir  
of C. S. late of \_\_\_\_\_ in \_\_\_\_\_, merchant, de-  
ceased, and J. R. of B. in the county of \_\_\_, Esq;  
administrator of all and every the goods and chat-  
tels, rights and credits which were the goods and  
chattels, rights and credits of the said C. S. at the  
time of his death. That some time in the year of  
our Lord \_\_\_\_\_ T. C. of London, merchant, and  
L. M. of the same place, merchant, both trading  
to \_\_\_\_\_ in \_\_\_\_\_, and being willing and desirous  
to unite, did come to a treaty with each other to  
unite their stock in the said trade to the said \_\_\_\_\_  
and other parts; and finding it necessary to state  
both their accounts, in order to the adjusting the  
terms of the then intended union, they did joynly  
and severally appoint and authorise their agents to  
examine and state the accounts of the several mer-  
chants in \_\_\_\_\_ with whom the said T. C. and L.  
M. or either of them had had any dealings; and  
thereupon the said T. C. and L. M. did duly and  
sufficiently authorise J. G. S. C. E. B. and J. I.  
concerned as agents for the said T. C. and L. M.  
residing at \_\_\_\_\_ aforesaid, to state and settle the  
accounts then depending between the said T. C.  
and L. M. and the said C. S. And the said T. C.  
and L. M. by their said agents duly authorised  
aforesaid, some time in the said year, came to an  
account with the said C. S. touching all dealings they  
had been between them, as well concerning m-  
oney borrowed and received by the said T. C. and

M. or either of them, of and from the said S. C. and goods and merchandizes of his that had been sold and delivered by him to them or one of them, as concerning business done by him for them, and at their request, and concerning all other matters of account then depending between them; and upon that account the said T. C. and L. M. were found justly and truly indebted unto the said C. S. in the sum of —— being foreign money of the value of —— each; and thereupon the said agents, they being fully authorised by them the said T. C. and L. M. in this behalf, did for securing the repayment of the said sum of —— give unto the said C. S. the four following bonds, all duly signed, sealed and executed by the said J. G. S. C. E. B. and J. R. and which has always been used there and esteemed to be binding to the said T. C. and L. M. since their union, bearing date on or about the —— day of —— in the year of our Lord ——, that is to say, one bond by which the said agents did acknowledge to have borrowed and received of one V. V. the sum of —— current money of that place, which said sum, with the interest thereof, after the rate of —— by the hundred, by the month of thirty days, they the said agents did oblige themselves, their heirs, executors and administrators, for and on behalf of the said T. C. and L. M. to repay on demand; and the other bond of like form, whereby the said agents did acknowledge to have borrowed and received of one B. G. the sum of —— of like money, which sum, with interest thereof after the same rate, they did oblige themselves, their heirs, executors and administrators, for and on behalf of the said T. C. and L. M. to repay on demand; and one other bond of like form, whereby the said agents did acknowledge to have borrowed and received of one S. N. the sum of —— of like money, which sum, with the interest thereof

after the same rate, they did oblige themselves, their heirs, executors and administrators, for and on behalf of the said *T. C.* and *L. M.* to repay on demand; and one other bond of like form, whereby the said agents did acknowledge to have borrowed and received of one *C. B.* the sum of — of like money, which sum, with the interest thereof after the same rate, they did oblige themselves, their heirs, executors and administrators, for and on behalf of the said *T. C.* and *L. M.* to repay on demand, as in and by the said four bonds, had your orators the same to produce, might appear; And your orators further shew, that the said *V. V. B. G. S. M.* and *C. B.* were merely trustees or agents for the said *C. S.* and that the said bonds were given to him in their names, and for his use only, it being usual in — in the dominions of — to take securities for money in fictitious names, or in the names of trustees, or persons deceased, in order to conceal their substance from the governors of those provinces, and to prevent arbitrary taxes and impositions from being imposed upon them, and that they did several and respectively indorse and assign the said bonds to the said *C. S.* or the property and right of the said bonds, and every of them, and the money secured was thereby or otherwise legally and rightfully vested in him the said *C. S.* according to the laws of the country and nature and method of transacting such affairs; and your orators expressly charge, that the said *C. S.* was the proprietor of the said bonds, and admitted and acknowledged to be such as well by the said *T. C.* and *L. M.* as by the said *J. G. S. C. R. B.* and *J. R.* and other the said *T. C.* and *L. M.*'s agents in — and several considerable sums were actually paid by them to the said *C. S.* upon account of the said bonds, or the interest thereof; and your orators charge, that the said rate of interest is a fair, usual

usual and lawful interest for the forbearance of money in that country. And the usual and constant method of stating accounts of interest in that country is, at the end of every year to compute the interest then due as principal, and compute interest upon the same from the end of such year. And your orators further charge, that the said *V. V. B.* *G. S. N.* and *C. B.* are all of them persons residing in \_\_\_\_\_ out of the dominions of his Majesty, and out of the jurisdiction and the reach of the processes of this honourable court, and in parts unknown to your orators. And your orators further shew, that the said bonds so given were true and proper evidences of a debt due from the said *T. C.* and *L. M.* to the said *C. S.* and a charge upon them the said *T. C.* and *L. M.* and such as were usually given by their direction and authority for the securing of their just debts, and generally submitted to in other cases; And that they were actually given to the said *C. S.* upon account of so much money really and justly due from the said *T. C.* and *L. M.* as aforesaid, upon the stating of the said account. And your orators further shew, that some time after the stating of the said accounts, and giving the said bonds as aforesaid, the said *T. C.* and *L. M.* united their said stocks, and were united into one company, and by virtue of their union, and otherwise, the said *T. C.* and *L. M.* are chargeable with and ought to pay all their and each of their just debts and demands, and particularly the monies secured or mentioned to be secured by the said bonds so as aforesaid given to the said *C. S.* And the said *T. C.* and *L. M.* did actually allow in account to the said *C. S.* interest after the rate aforesaid, for the said sum of \_\_\_\_\_, mentioned in the said bonds until the month of \_\_\_\_\_ or \_\_\_\_\_ in the year \_\_\_\_\_. And your orators shew, that on or about the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ *J. B.* and *J. H.* being

ing servants and agents of the said T. C. and L. M. and acting on their behalf and by their direction, sent for the said C. S. to come to them on board a ship called the ——, then lying at —— bar in ——, under pretence to state his accounts as they then stood with the said T. C. and L. M. And your orators expressly charge, that at that time the principal monies due to the said C. S. upon the said bonds, together with the interest thereof after the rate aforesaid (which was the same rate of interest as the said T. C. and L. M. always charged the said C. S. with for such money and goods as they had at any time advanced to him) amounting to —— and discounting thereout all such monies and the full value of all such goods as he had received from or upon account of the said T. C. and L. M. with compound interest as aforesaid, and all demands whatsoever which they had upon him, there would have remained due from the said T. C. and L. M. to the said C. S. at that time the sum of —— and upwards, upon the balance of all accounts; And your orators further shew, that instead of stating accounts with the said C. S. in a fair and regular manner, as he hoped they would have done, they the said J. B. and J. F. took him the said C. S. into custody, and confined him on board the said ship, without his receiving any meat or drink, or having any refreshment or relief of nature whatsoever for the space of —— or for some other long space of time; he the said C. S. being, as they well knew, forbidden, by the religion which he professed and was of, to take any refreshment or relieve nature in any manner whatsoever elsewhere than upon dry land; and the said J. B. and J. F. or one of them, during the said time, used great cruelty towards him the said C. S. frequently threatening to take away his life, unless he would comply with their proposals, which were to sign an agreement

to deliver up his said bonds, and to give some release or discharge for the money due to him thereupon, upon his receiving — and being discharged from a debt of — due from him to the said *T. C.* and *L. M.* which arose from the money and goods which he had received upon account of the said *T. C.* and *L. M.* and compound interest for the same after the rate aforesaid ; but the said *C. S.* did for a long time and with great firmness refuse to comply with such unjust proposals, and offered to state his accounts with the said *T. C.* and *L. M.* upon a fair and reasonable foot, and allow all their just demands and objections ; but the said agents of the said *T. C.* and *L. M.* or one of them, arbitrarily insisted upon defaulking the greatest part of what was due upon the said bonds, without giving any reason for the same, threatening the said *C. S.* that if he would not comply with their demands, they would carry him to — where he should settle his accounts, meaning that he should settle his accounts in prison ; and your orators farther shew, that the said *C. S.* being reduced to the greatest extremity by the aforesaid cruel confinement, and having no other way of obtaining a release from the same, he was thereby forced and prevailed upon to sign some instrument, purporting to be an agreement to the effect before mentioned ; upon which he was permitted to go on shore, and within a few days afterwards he was again applied to by the said *J. H.* and *J. B.* and others, the servants and agents of the said *T. C.* and *L. M.* and required to perform the said agreement, and deliver up his said bonds, upon their discharging him in the name and on the behalf of the said *T. C.* and *L. M.* from the said demands of — ; but the said pretended agreement having been so unduly extorted from him, he the said *C. S.* at first absolutely refused to comply therewith ; upon which the said servants and agents of

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the said *T. C.* and *L. M.* again renewed their threats and menaces, and not only threatened violence to his person, but also threatened to complain of him to \_\_\_\_\_ who was an officer of great power and authority under the \_\_\_\_\_, and use the influence and interest of the said *T. C.* and *L. M.* against him, and also threatened, that they would not only insist upon the said writing of agreement, so unjustly obtained, in bar of any claim upon the said bonds, and that the said *T. C.* and *L. M.* would never pay any money upon account of the said bonds, but would also prosecute him the said *C. S.* upon their demands against him; and he the said *C. S.* at first refused to come to the said *J. H.* and the other servants and agents of the said *T. C.* and *L. M.* who sent for him for the purposes aforesaid, representing to them, that he was afraid to come to them, lest he should be treated there as he had been on board the said ship, which he explained to be by putting him under confinement, and terrifying him by threatening to take away his life; upon which the said *J. H.* acquainted the said *T. C.* and *L. M.* with this answer of the said *C. S.* who thereupon thought fit to give some assurances to the said *C. S.* by the said *J. H.* that he should not have any force offered to him, but should be treated in a friendly manner; and upon such assurances the said *C. S.* came to the said *J. H.* or some other agent or agents of the said *T. C.* and *L. M.* and grievously complained of the great injury done him by the said *T. C.* and *L. M.* in forcing him by such undue means to relinquish so great a part of his just demands; but the said *J. H.* and other the agents of the said *T. C.* and *L. M.* absolutely refusing on the part of the said *T. C.* and *L. M.* to pay him anything, or to settle his account upon any other footing than that of the said pretended and unjust agreement; and he the said *C. S.* having no way to com-

pel the said *T. C.* and *L. M.* in that country to discharge the said bonds, and being much terrified with the apprehensions of a rigorous prosecution, he was so far imposed upon and intimidated as to deliver up to the said agents and servants of the said *T. C.* and *L. M.* all his said bonds, and to sign some release or discharge for the money due thereupon, upon their discharging him from the said sum of — due from him as aforesaid, and paying to him the further sum of — and no more, instead of — and upwards, then justly due to him from the said *T. C.* and *L. M.* upon the balance of his account, so that he was by the said force and threats compelled to accept of less than his just demands by the sum of —; and your orators expressly charge, that the said force and threats were made use of in pursuance of directions by the said *T. C.* and *L. M.* or one of them, or have since been approved of and authorised by them, and were for the benefit of the said *T. C.* and *L. M.* they taking advantage of the said unjust and extorted compensation of the said debt; and that the said *T. C.* and *L. M.* or one of them, in order to induce their said servants and agents to proceed in that manner, did actually promise to allow to their said servants or agents, or some of them, some certain *premium* or reward by the hundred for all monies which they should save to the said *T. C.* and *L. M.* in stating the accounts of the said *C. S.* out of what monies were justly due to him upon the said accounts; and an account being drawn by the said *J. H.* to shew how much was saved to the said *T. C.* and *L. M.* by the said transactions with the said *C. S.* the said *T. C.* and *L. M.* or one of them, did afterwards actually pay or allow unto the said *J. B.* and *J. H.* or some other of their servants or agents, the said *premium* or reward for the said sum of — being the sum appearing by the said

account so drawn by the said *J. H.* and by the books of their said agents since transmitted from thence, and now in the custody or power of the said *T. C.* and *L. M.* or one of them, to be saved to them by the transactions aforesaid out of what was justly due from them to the said *C. S.* as aforesaid; And your orators further shew, that the said *C. S.* residing in —, and being advanced in years and incapable of taking so long a voyage as from thence to *Great Britain*, and having no way to commence any correspondence with any persons here, or to appoint any persons to complain to any court of justice here of the said fraud and oppression but by means of the servants or agents of the said *T. C.* and *L. M.* whom he was not able to prevail with to do him any such office; no suit in law or equity was commenced against the said *T. C.* and *L. M.* upon account of the said demands during the life-time of the said *C. S.* who departed this life in — some time in the year —. And your orators shew, that your orator *C. C.* is his only son and sole heir, and as such is, by the law of — (in which country he has always resided) well intitled to all the real and personal estate, and also to all the rights and credits of him the said *C. S.* without taking administration, or any other ceremony; and your orator *J. R.* since the decease of the said *C. S.* hath obtained letters of administration out of the prerogative court of the archbishop of *Canterbury* of all and singular the goods and chattels, rights and credits which were of the said *C. S.* at the time of his decease, in trust for your orator *C. C.* he the said *C. S.* having made no will or other disposition of his effects, but having died intestate, as by the said letters of administration in the custody of your orator *J. R.* and ready to be produced to this honourable court, may appear; And your orators expressly charge, that no other administration hath

hath been committed of the goods and chattels, rights or credits of the said C. S. And your orators farther shew, that on the — day of — in the said year — there being due from the said T. C. and L. M. to the said C. S. upon the balance of their accounts, the sum of — foreign money of — as aforesaid; and there having accrued due to your orators from that time to the — day of — last, for interest for the same, the further sum of — after the rate of interest aforesaid, in all — being of the value of — of lawful money of *Great Britain*, your orators well hoped, that the said T. C. and L. M. would have redelivered to your orators the said bonds so unjustly and unduly obtained from the said C. S. and would have paid to them the same; and for that purpose your orator J. R. in his proper person, and your orator C. C. by your orator J. R. his attorney lawfully authorised, have in an amicable manner applied to the said T. C. and L. M. for that purpose; But now so it is, may it please your Lordship, that the said T. C. and L. M. combining and confederating themselves to and with the said J. B. and J. H. and to and with divers persons unknown to your orators, whose names, when discovered, your orators pray may be inserted herein, with apt words to charge them as parties, and contriving to defeat your orators of the effects of the said C. S. so fraudulently obtained from him as aforesaid, do absolutely refuse to come to any account with your orators touching the premisses, most unjustly insisting, that the delivery of the said bonds by the said C. S. and the signing the said release is a legal bar to your orators demands; whereas your orators do expressly charge, that the said bonds and release were obtained from him the said C. by threats and cruel confinement, and great imposition, and therefore ought to be set aside in a court of equity; it plainly appearing by the

the books of the said *T. C.* and *L. M.* that no manner of satisfaction whatsoever was ever made to the said *C. S.* for the sum of — or any part thereof; And at other times the said *T. C.* and *L. M.* pretend that they or either of them never were indebted to the said *C. S.* in any sum of money whatsoever; whereas your orators do expressly charge, that the truth of the matters herein before set forth will appear as well from the books of the said *T. C.* and *L. M.* and the accounts and entries of their transactions kept by themselves and their servants, as by other good proofs thereof, which your orators are able and ready to lay before your Lordship; and at other times the said *T. C.* and *L. M.* pretend, that they are intitled to the benefit of the delivering up of the said bonds by the said *C. S.* in manner aforesaid, and that if he was imposed upon therein, your orators ought to seek their remedy against their servants and agents who were guilty of the said fraud and imposition; whereas your orators charge, that the said *T. C.* and *L. M.* having consented to such fraud and imposition, and received the benefit and advantage thereof, they ought to be looked upon as parties to the said fraud and imposition, and cannot be intitled to receive any benefit from the same; and the said *T. C.* and *L. M.* sometimes pretend, that the said bonds or any of them, from the tenor thereof, are not, nor ever were, a proper charge upon them the said *T. C.* and *L. M.* and that they are not obliged to pay the same or any part thereof; and that the said *C. S.* was imposed upon in the accepring of the said bonds by the said *J. G. S. C. E. B.* and *J. R.* who had not authority, as they the said defendants pretend, from the said *T. C.* and *L. M.* or either of them, to give such bonds, or to charge them the said *T. C.* and *L. M.* thereby, and that your orators ought to seek their remedy for the same against the said *J. G. S. C. E. B.* and *J. R.* where-

is your orators do expressly charge, and so the truth is, that the said bonds were given to the said *C. S.* for a just debt then due from the said *T. C.* and *L. M.* to him, the same being the balance of the account then stated as aforesaid between him and the said *T. C.* and *L. M.* and as a solid and sufficient security for the same; and in case they were not so, the giving the same was a gross fraud, practised by the said *T. C.* and *L. M.* by their said agents upon the said *C. S.* and the said debt ought to be still looked upon as subsisting in case the said bonds are not a good charge upon them the said *T. C.* and *L. M.* and were no just satisfaction or proper security for the said former debt; and your orators do humbly insist, that in case the said *C. S.* was imposed upon or defrauded in accepting of the said bonds, the said *T. C.* and *L. M.* ought to be looked upon as parties to such fraud and imposition, in as much as they from time to time gave credit to the said bonds, by crediting the account of the said *C. S.* with the principal money and interest thereby secured or mentioned so to be, and by payment of several considerable sums in part of the same, and by that means preventing his seeking any remedy against the said *J. G. S. C. E. B.* and *J. R.* touching the said demands, in case they were liable thereto; and your orators farther shew, that soon after the giving of the said bonds they the said *J. G. S. C. E. B.* and *J. R.* either continued to reside in — or otherwise withdrew themselves into other parts remote and unknown to your orators, and out of the dominions of his Majesty and the jurisdiction of this honourable court, so as they or any of them are not amenable to justice by any process of this honourable court; and your orators are not able to discover where they or any of them do now reside; And your orators farther charge, that the then servants and agents of the said *T. C.* and *L. M.* who were concerned in the said

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said fraud and imposition, except the said *J. H.* and *J. B.* are long since dead, or in places remote and unknown to your orators, and where they cannot be reached by the process of this honourable court; And the said *T. C.* and *L. M.* or the said *J. B.* and *J. H.* or one of them, now have or very lately had in their or one of their custody or power, or in the custody or power of some or one of their servants, the said bonds so taken from the said *C. S.* and the books and accounts, by which it fully appears, that the said sum of —— was never paid or satisfied, but was saved to the said *T. C.* and *L. M.* as aforesaid; the which bonds are the proper evidence of your orators said demands, and they detain them from your orators; and the said *T. C.* and *L. M.* do refuse to discover unto your orators, whether or no the said *J. G. S. C. E. B.* and *J. R.* or any of them, or any other of their agents or servants at —— aforesaid, had authority from them the said *T. C.* and *L. M.* to state the accounts of the said *C. S.* or to give the said bonds as aforesaid, or by what instrument, appointment, powers or instructions they were so authorised, or whether or no the said stating of the said accounts, or the giving of the said bonds, was ever agreed to or approved of by the said *T. C.* and *L. M.* or either of them. All which acting and doings, and pretences of the said *T. C. L. M. J. B.* and *J. H.* and the rest of their confederates are contrary to all equity and good conscience, and greatly tend to the defrauding and defeating of your orators of their said just demands. In tender consideration whereof, and forasmuch as your orators are without remedy in the premisses at the common law, and are proper to be relieved before your Lordship in a court of equity, where frauds and impositions are set aside, and evidences unduly detained are directed to be delivered up, and where mutual accounts are taken and balanced, and matters of

this kind are properly cognizable; To the end therefore that the said *T. C.* and *L. M. J. B.* and *J. H.* and their confederates, when discovered, may full, true and perfect answer make to all and every the matters and things herein contained, as particularly as if the same were here repeated and distinctly interrogated; and that not only as to their direct and positive knowledge and remembrance, but also as to the best of their information, judgment and belief, and especially that the said *T. C.* and *L. M.* may answer and set forth, whether or no your orator *C. C.* is not the son and sole heir of the said *C. S.* and whether by the laws of \_\_\_\_\_ or the laws in use in \_\_\_\_\_ or the county thereunto adjoining, your orator *C. C.* is not intitled to all the moveable and immoveable estate and effects of the said *C. S.* and to all his rights and credits; and whether the said *S. C.* and *L. M.* were not in or about the year \_\_\_\_\_ indebted unto the said *C. S.* in a very considerable, and in what particular sum of money, and whether in account was not about that time taken thereof in manner as is herein above set forth, or in any other manner, and how; and what was the result of that account, and what balance was thereupon found due unto the said *C. S.* and whether or no the bonds abovementioned, or some, and which of them, or my other, and what bonds were given by the said *S. C.* and *L. M.* or their said agents on their behalf, and on their account, to the said *C. S.* upon that or any other, and what account; and may set forth, whether or no, at the time that the said *C. S.* came on board the said ship \_\_\_\_\_ at \_\_\_\_\_ bar, he was not intitled to the said four bonds of the said *S. C.* and *L. M.* or to some other, and what bonds of that nature; and whether it was not at that time, or is not now the custom or usage at \_\_\_\_\_ aforesaid, for the forbearance of money at the end of every year, to add the interest then due to the principal,

cipal, which makes the forbearance of the payment of the money due to be after the rate of three fourths by the hundred, by the month of thirty days, compound interest as aforesaid; and whether or no the said T. C. and L. M. or either and which of them, had not actually advanced several sums of money to the said C. S. in part of payment of the said four bonds; and whether the said T. C. and L. M. in their accounts with the said C. S. had not charged him with interest after the rate of three fourths by the hundred, by the month of thirty days, compound interest for the money so advanced; and whether the said T. C. and L. M. had not advanced and delivered to the said C. S. several parcels of goods at certain prices in part of payment of the said bonds; and whether the said T. C. and L. M. in their accounts with the said C. S. did not charge him at the said rate of three fourths by the hundred, by the month of thirty days, compound interest for the value of the goods so delivered from the time of their delivery; and whether in the said month of \_\_\_\_\_ in the year \_\_\_\_\_ or \_\_\_\_\_ when the said C. S. was induced to go on board the said ship \_\_\_\_\_ at \_\_\_\_\_ bar as aforesaid, the principal and interest of the said bonds estimated at the rate of three fourths by the hundred, by the month of thirty days, compound interest as aforesaid, did not amount to the said sum of \_\_\_\_\_ or to what other sum the same did amount; and whether the several payments made in money and goods for the discharge of the said bonds, did at that time in the whole with interest at the rate of three fourths by the hundred, by the month of thirty days, compound interest, commencing from the time of payment of each of the sums of money, or the delivery of each of the parcels of goods, amount to more than \_\_\_\_\_ or to what other sum the same did amount in any account of such money or goods delivered; and whether the same did amount to less than \_\_\_\_\_ or to what other sum the same did amount in any account of such money or goods delivered;

account given in to the said C. S. and allowed by him; and if the said T. C. and L. M. pretend, that such sums of money, and the values of such goods amounted to more, that then they may set forth such accounts in the words and figures thereof; and that the said T. C. and L. M. and the other confederates, may set forth, whether there was not due to the said C. S. on the balance of this account in the said month of \_\_\_\_\_ at the latter end of the year \_\_\_\_\_ the sum of \_\_\_\_\_ and whether, notwithstanding there was so large a balance due to the said C. S. the said T. C. and L. M. by their agents aforesaid, did oblige themselves to pay to the said C. S. more than \_\_\_\_\_ or what other sum they did oblige themselves to pay by the said pretended agreement made on board the said ship \_\_\_\_\_, and whether such pretended agreement, or the obligation executed by the said C. S. on board the said ship, whereby he became obliged to deliver up the aforesaid bonds, was extorted by force and violence, or was the result of any equal or impartial stating of accounts between the said T. C. and L. M. and the said C. S. and whether they have not heard, or do not believe, that the said C. S. was of a sect of religion which strictly forbids the professors thereof to eat meat, drink any sort of drink, or to make use of any refreshment or ease of nature during the time they are upon the sea; and whether or no the said C. S. was not invited by the said J. B. and J. H. agents of the said T. C. and L. M. to come on board the ship \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_ miles from the town of \_\_\_\_\_ and his place of abode, in order to settle his accounts; and whether the said C. S. was not at that time, and always, very ready to settle his accounts with the said T. C. and L. M. upon a fair balance of what was due to him from them for the said bonds, and of what they alledged he was indebted to them for money and goods advanced to him; and whether the agents

agents of the said T. C. and L. M. or some or one of them, did not insist upon his defaulting all or the greatest part of what was due on the said bonds, and whether the said C. S. did not refuse so to do; and whether the said agents of the said T. C. and L. M. or some, or one of them, did not thereupon threaten the said C. S. that if he would not comply with the said demands made on the behalf of the said T. C. and L. M. he should be carried to ——, where he should settle his accounts; and whether the meaning thereof was not that he should settle his accounts in prison; and whether the said C. S. was not detained ——, or for some other, and what space of time, on board the said ship ——, at —— bar in the month of ——, in the latter end of the year ——, till he signed some writing obliging himself to deliver up the said four bonds, and to give a full discharge to the said T. C. and L. M. of all demands from them, and what space of time he remained on board the said ship; and whether he did eat any kind of meat or drink any kind of drink, or use any ease or refreshment of nature, during the time he continued on board the said ship; And whether or no they have not heard, or do not believe, that there was force, violence, or threats used, and particularly by threatening to take away his life, or otherwise, to the said C. S. on board the said ship ——, to terrify him into the signing an obligation, of giving a full discharge to the said T. C. and L. M. on their payment of ——, or upon any other, and what terms; and whether after the said C. S. had signed such obligation, and was permitted to go on shore the said J. H. was not employed on the behalf of the said T. C. and L. M. to carry the said obligation into execution; and whether upon his the said J. H. sending to the said C. S. in the month of —— in the year ——, to come to him at —— he the said C. S. did not immediately return for answer,

sver, that he was afraid to come to the said *J. H.* lest he should be treated by him as he had been on board the ship — ; and whether he did not explain the same to be by putting him under confinement, and terrifying him by threatening to take away his life, as aforesaid ; and whether the said *J. H.* did not acquaint the said *T. C.* and *L. M.* with this answer of the said *C. S.* and whether upon assurances given to the said *C. S.* by the said *J. H.* that he should not have force offered, but should be treated in a friendly manner, he the said *C. S.* did not then come to him ; and whether the said *C. S.* in the whole course of his treating with the said *J. H.* till the — were paid, and the discharge signed in pursuance of the said forced obligation, did not from time to time most grievously complain of the great injury done him by the agents of the said *T. C.* and *L. M.* in forcing him to relinquish so great a part of his just debt ; and whether the four bonds above-mentioned were not delivered up to the said *J. H.* and a general discharge of all demands upon the said *T. C.* and *L. M.* executed by the said *C. S.* in or about the month of — ; and whether the said bonds were not given up, and the discharge to the said *T. C.* and *L. M.* executed in pursuance of the forced obligation aforesaid, signed on board the said ship — , at — bar ; and whether the said *J. H.* or some other of the agents of the said *T. C.* and *L. M.* did not make up the account of the said *C. S.* with the said *T. C.* and *L. M.* to the time of delivering up of the said bonds ; and whether in the said account there was not — allowed, or appearing to be due to the said *C. S.* for principal and interest on the said bonds ; and whether in the said account the said *S. C.* was made debtor to the said *T. C.* and *L. M.* for more than — , or for what other sum for principal and interest of money or goods advanced by them to the said *C. S.* or any

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other account whatsoever; and whether by the said *T. C.* and *L. M.*'s accounts with the said *C. S.* he was made debtor to them in the month of —, for more than —, or for what other sum; and whether upon the delivering up of the said bonds, and signing the said discharge by the said *C. S.* he the said *J. H.* or any other person on the part of the said *T. C.* and *L. M.* paid to the said *C. S.* more than —, together with — as interest of —, that should have been paid in ready money the — before; and whether there was not —, or some other, and what sum of money paid short to the said *C. S.* of what was due on the said bonds; and whether the said article of — was brought to account in the said *T. C.* and *L. M.*'s accounts with the said *C. S.* and in what manner the said article was entered, and whether the same was or is entered as much saved to them, or in what other manner the same was or is entered, to balance the said — due to the said *C. S.* as aforesaid; and whether the said agents of the said *T. C.* and *L. M.* who went — bar as aforesaid, and the said defendants *B.* and *J. H.* or some, or one, and which of them have not often made great merit of saving to the said *T. C.* and *L. M.* so much money by the adjustment with the said *C. S.* as aforesaid; and whether the said *T. C.* and *L. M.* or either, and which of them have not been applied to by their said agents, some, or one, of them, for some recompence for such great service; And whether the said *T. C.* and *L. M.* have not diaries, books of accounts, and books of consultations at — sent every year them into *England*; and that the said *T. C.* and *M.* before they put in their answer to this your attorney's bill, may cause diligent search to be made the said diaries, books of accounts, and books of consultations, and the several other accounts and entries hereby inquired after; and that they may

forth a true copy of the diary or consultation held on board the ship —— on the —— of ——, at which were present the said *J. B.* and *J. H.* and that the said *J. B.* and *J. H.* may severally and respectively set forth what they know, remember, or have been informed concerning the transactions with the said *C. S.* touching his said bonds and accounts with the said *T. C.* and *L. M.* on board the said ship ——, or at any time afterwards; and that the said *T. C.* and *L. M.* and the said *J. H.* may set forth a true copy of the said account drawn by the said *J. H.* as aforesaid, shewing how much was saved to the said *T. C.* and *L. M.* by the said transactions with the said *C. S.* and that the said *J. H.* and *J. B.* may severally answer and set forth, if any, and what premium or allowance was given or made to the said servants or agents by the said *T. C.* and *L. M.* for or in respect of the money saved to them by their said transactions with the said *C. S.* or whether the said *T. C.* and *L. M.* or either, or which of them, did not promise to make or give them some and what allowance or premium thereupon, and whether the said *J. B.* and *J. H.* have not made several, and what applications, to the said *T. C.* and *L. M.* either and which of them, for some, and what premium or allowance thereupon, and what was the result and consequence of such applications, according to the best of their knowledge, remembrance or belief; and that the said defendants, and every of them, may set forth what is now become of the same bonds, and of every of them, and where, and in whose hands; custody, knowledge, or power, the same bonds, or any of them, now are, or at any time since the delivering up of the same, and when last, were, or have been, and whether the said bonds, or some of them, and to what amount, have not since the delivering up thereof been in the custody of the said *T. C.* and *L. M.* or of the said other defendants,

or one of them ; and whether the said C. S. be now living or dead, and if he be dead, when he died, and in what country, to the best of their knowledge, information, and belief ; and whether he or your orator C. C. were ever in *Great Britain*, as they know or believe ; and that the said release so unjustly obtained from the said C. S. may be set aside and delivered up to your orators to be cancelled ; and that the said bonds may be delivered up intire and uncancelled to your orators, and that the said T. C. and L. M. may come to a fair account with your orators, touching all monies due to the said C. S. in his life-time, or to your orators or either of them, in his right, since his death, for principal and interest upon the said bonds, and all just demands and accounts depending between the said T. C. and L. M. and him the said C. S. in his life-time, and may pay to your orators what shall appear to be due upon the balance of such accounts ; and that your orators may have such farther and other relief touching the premisses, as shall be agreeable to equity, and as your Lordship shall think fit. May it please, &c.

*A bill for tithes.*

*To the Right Honourable, &c.*

H U M B L Y complaining, sheweth, unto your Lordship, your orator J. P. of P. in the county of C. that your orator now is, and for six years last past hath been seised in fee, and proprietor and owner of all and every the tithes of corn and grain, and other great and predial tithes whatsoever arising, renewing, increasing, and growing within the townships, hamlets and vills of W. and A. and the titheable places thereof in the parish of B. and parcel of the impropriate rectory thereof in the said county,

county of C. and particularly of the tithes of corn and grain, and other great and predial tithes arising, renewing, increasing and growing in, upon and within the tenement called B. in A. and W. aforesaid, or one of them, and by reason thereof during all the time aforesaid, was and now is justly, rightfully and lawfully intitled unto, and ought to have enjoyed, had, and received, and ought to have, enjoy and receive, all and every the tithes of corn, grain, and other great and predial tithes arising, renewing, increasing or growing, or which, during the said time have arisen, renewed, increased or grown within the said township, hamlets and vills of W. and A. and either of them, and particularly in, upon and within the said tenement called B. and also all and every the sums, matters and things whatsoever, which during the said time, of right, or by any custom within the said township, hamlets or vills, have been payable, as for or on account of tithe corn, grain, or other great and predial tithes, or which ought to have been so payed or answered. And your orator further sheweth to your Lordship, that M. B. widow, and B. her son, jointly and severally, for and during the said space of six years last past, had held, or occupied and enjoyed the said tenement called B. within A. and W. aforesaid or one of them, or the lands and grounds thereunto belonging, and other lands and grounds within A. and W. aforesaid, or one of them, or the titheable places thereof in and upon the same, and within the said townships, hamlets and vills, or one of them, and the titheable places thereof, and had jointly and severally growing, renewing, increasing, and thence reaped, and had, and took in the said years respectively several quantities of corn and grain, to wit, in each of the said years 100 shocks or hattocks of wheat, the tithe whereof in each year, if duly paid, would have been worth 20s. One hundred shocks

or hattocks of rye, the tithe whereof was worth in each year other 20s. Three hundred hattocks or shocks of oats, the tithe whereof would have been worth in each of the said years, if paid, 30s. One hundred and fifty shocks or hattocks of barley, the tithe whereof, if the same had been duly answered, would have been worth other 30s. One hundred shocks or heaps of beans, the tithe whereof was worth 15s. One hundred shocks or heaps of pease, the tithe whereof was worth other 15s. Two hundred shocks or hattocks of bigg, the tithe whereof was worth 30s. and upwards. All which said several tithes became due and payable from the said M. B. and B. her son, jointly or severally, in each of the said years, and ought to have been justly and duly paid and answered unto your orator as proprietor and owner of the said tithes and premisses. But so it is, may it please your Lordship, that the said M. B. and B. having entered into a combination and confederacy between themselves, and with several other persons unknown to your orator who when they shall be discovered, your orator prays they may be made parties hereto, with apt words to charge them, have and either of them hath neglected, omitted and refused to set out, pay, satisfy, or answer, and have not, nor hath either of them in any of the said years, set out, paid, satisfied, or answered unto your said orator the said several and respective tithes, or any of them, or made any agreement, composition, or just satisfaction to your said orator for the same, or any thing in lieu thereof, but though in a friendly manner requested thereto, have and hath jointly and severally refused to set out the same, or to pay or answer what is justly due to your orator on those accounts, or fairly or justly to forth, yield, or pay their and either of their said tithe, or to pay and make him any just satisfaction for the same, or for any the tithes substracted and with

with-held by them or either of them; but as they have concealed, so they do, and each of them doth endeavour to conceal the said titheable matters, and refuse to discover what lands, tenements, and hereditaments in particular they jointly and severally held, occupied, plowed and reaped within the said township, hamlets and villages in each of the said years, nor what tithes of corn and grain they in each of the said years, or either of them respectively with-held and detained from your orator, nor what is and was the value thereof; and as their reason for so doing the said confederates sometimes insist, that they have duly paid and answered to your orator the tithes of all and singular the titheable matters, and at other times that they are not nor were liable to the payment of any tithe in kind, but exempt and free from the payment thereof under an ancient modus or composition of 10s. yearly, or other the like sum payable time immemorial, in lieu of tithes of corn and grain, and other great and predial tithes arising, renewing, increasing and growing upon and within the said tenement and lands held, enjoyed, sown and reaped by them in the said several years aforesaid; which modus they pretend was paid by them in and for the said several years unto your orator; whereas your orator charges, as the truth is, that the said confederates, or either of them, did not set forth, pay, or answer the tithes due to your orator for the corn and grain reaped, had and taken by them, which grew upon the said tenement, lands and premisses, or any of them, in or for any the said years herein before mentioned, nor have they or either of them paid or answered any modus, pretended modus, or composition to your orator for the same, for any of the said years; and the truth is, as your orator charges it to be, that tithes of corn and grain, and other great and predial tithes arising from the premisses, are due and payable, and ought to be answered and paid

unto your orator in kind ; and the said confederates are not nor ought to be exempt from the payment thereof, upon any pretence of a modus payable in money, as in lieu thereof, which however was never paid to your orator ; and if there was any colour to set up such pretences to a modus, yet that is owing to a late agreement, whilst the titbes, as also the said tenement and lands were in the bands of the family of the M.'s and not any prescriptive modus, nor was the said tenement antiently discharged from payment of titbes in kind, upon or under payment of any modus or sum in lieu of titbes ; but titbes in kind were paid and answered as for other the lands or tenements within the said township, till the said tenement and titbes both came into the bands, ownership or possession of M. of H. in the said county, who settled and conveyed the said titbes upon or unto one of his younger sons, from whom the same descended and came to R. M. Esq; his kinsman, of whom your orator purchased the same ; and the said tenement called B. continuing in the ownership of some other of the M.'s, near relations to the then proprietors of the said titbes, they on account of kindred or other motives complied to accept 10s. per annum, or other such sum in money for the titbes arising from the said tenement, which being a temporary agreement only, and not any modus that had been paid time immemorial, your orator humbly apprehends himself not to be bound or obliged thereby, nor ought the said confederates, nor either of them, who, or one of them, purchased the said tenement, or claim under some purchaser thereof, or have or had possessed the same during the time aforesaid, to have or claim any discharge or exemption from payment of titbes in kind, as upon or under any such pretences, they, or one of them, well knowing or having been informed, or from the papers, books, notes, and memorandums in their keeping or power, may be well satisfied that there was aniently

no such modus paid or received in discharge of tithes arising from the said tenement; but that which was paid and received as on account thereof was modern and under late agreement and compliance whilst the said tenements and tithes were both in the bands of the family of the M.'s; and the said confederates ought of right and justice to have answered and paid unto your orator their said several tithes for the said titheable matters arising and growing in and upon the said tenement, and within the said township, vills and hamlets as aforesaid; yet the said confederates and each of them, under some and the like frivolous and unjust pretences as aforesaid, have refused, and do refuse to pay or answer the said tithes or any of them to your said orator, or to make him any just satisfaction for the same, or to make him any full and fair discovery of the titheable matters they severally had within the said townships, hamlets and vills and titheable places thereof, in the said several years, or any of them, tho' they have been severally requested thereto. All which actings, doings, pretences and designs of the said confederates are contrary to equity and good conscience, and tend to your orator's great wrong and injury: In tender consideration whereof, and for that your orator cannot exactly prove the several natures, kinds and quantities of the said titheable matters, nor what the said tithes due from them and each of them unto your orator did or might in each of the said years amount unto, but the same being industriously concealed by the said confederates remain principally in their knowledge; from whence and the evidence your orator may give, he your said orator well hopes he shall be enabled to make out his charge against the said confederates, whereupon to be relieved and to obtain satisfaction for the single value of the said tithes subtracted and withheld as aforesaid, and to have such other relief and satisfaction as may appear just: To that end therefore,

therefore, and in order thereto, that the said confederates may, upon their several corporal oaths, true, perfect and distinct answer make to all and singular the premisses, and more especially that they and either of them may discover and set forth what particular lands, tenements, grounds and hereditaments they jointly and severally had during the said six years, or any and what part thereof held, occupied or enjoyed within the said township, hamlets and vills, and each of them, and set forth what parts thereof were in each of the said years sown with corn and grain, and the pieces, kinds and values thereof in each year distinctly, and what corn they jointly and severally reaped, had, cut or took within the said township, hamlets and vills, and in what years distinctly of the said six years, and what was and were the full value of the tithe thereof in each of the said years distinctly, if the same had been paid in kind; and whether your orator, or s<sup>r</sup> m<sup>r</sup>, and who, on his behalf, did not, at some, and what time and times, apply to them, or one, and which of them, to set out or answer their, or one, and which of their said tithes, and shew cause, if they can, why they refused so to do; and whether they have not severally neglected or refused to pay or answer the same, or to give any satisfaction or make any composition or recompence to your orator for or in lieu of the tithes, and what were the several tithes of corn and grain grown, reaped, and had by them, and either of them, within the said township, hamlets and vills, worth, if the same had been justly paid and answered in each of the said six years; and if they, or either of them, shall set up or pretend to any modus or composition, as for or on lieu of the said tithes, or any of them, that they may shew whether they have paid or tendered the same in any and what years, and when, where, and to whom, and for what years the same is arrear and unpaid, and what sum modus

modus is in particular, and to what lands, tenements and grounds the same extends; and which is covered or pretended to be covered thereby, and which not, and when such modus or composition commenced, and by and under what agreement, and when and with whom made, and whether, as they severally have heard and believe, the tithes of corn and grain growing and arising from the said tenement, lands and premisses, or some, and which of them, were not paid, and what in kind; and whether the 10s. or other sum pretended to be paid or payable as a modus or composition for or in lieu of great tithes arising from the said tenement and premisses, was not by or under some, and what agreement or compliance whilst the said tithes and tenement were in the bands of some of the family of the M.'s; and whether the same was made perpetual or only temporary and during what time such modus or composition was paid and accepted, and by whom and when; and that they may make diligent search amongst all the books, papers, notes and memorandums in their or either of their custody or power, and set forth what they know, have heard, or can find relating to the said pretended modus or payment of tithes in the very words and figures, and shew cause, if they can, why they have severally refused or neglected to set forth, and pay, and answer their and either of their tithes to your orator, or to make him any recompence, compensation or satisfaction for the same, or for the value, or in lieu thereof; and that the said confederates may, upon a full and just discovery of the premisses, be decreed and obliged to pay, satisfy and answer unto your orator all and every the tithes subtracted by them and either of them, or the just value thereof, as in every of the said years became justly due and payable from them and either of them respectively unto your said orator, not desiring to take advantage of the forfeiture of the treble value, but well contenting himself with

with the single value of the said tithes substracted, with-held, and not paid; and if any *modus* shall be set up and supported, that they may shew in particular to what lands and grounds the same extends, and why they have not paid and answered the same, and may be decreed to make payment thereof and of the arrears; and that your orator may, upon a full and fair discovery of all and every the matters and things aforesaid, and of the circumstances and particulars relating thereto, upon the oath of the said confederates, be otherwise relieved in all and singular the premisses, according to equity and good conscience. May it please your Lordship to grant unto your orator his Majesty's most gracious writ of *sub-p<sup>ro</sup>para* to be directed to the said *M. B.* and *B.* her son, thereby commanding them, &c.

*A bill to carry articles of agreement into execution, by a bargainer against a bargainee, and for a specifick performance thereof.*

*To the Right Honourable, &c.*

**H**UMBLEY complaining sheweth unto your Lordship, your oratrix *E. G. of B.* in the county of *C.* widow, that your oratrix being seised in fee of and in a freehold messuage and tenement with the appurtenances, situate, lying, and being in *B.* aforesaid, which she and *J. T.* her late father deceased, in or about the year of our Lord —, conveyed by way of mortgage unto *J. L.* late of *L.* in the said county of *C.* yeoman, since deceased, and his heirs for securing the repayment of the sum of — with interest after the rate of ten-pence in the pound or thereabouts; and your oratrix being also seised in fee, or otherwise well intitled, to her and her heirs, according to the custom of the ma-

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nor of *W.* in or to a customary or tenant-right messuage or croft called *P.* messuage, with the garth and front to the same adjoining, and part of another garth or curtilage lying at the west end of the beforementioned freehold messuage, and also of divers parcels of customary or tenant-right lands herein aftermentioned, parcel of the said manor of *W.* and situate, lying and being within the township or town fields of *B.* aforesaid, namely, two butts of arable land on the east side of the gards; four riggs of arable land called the croft, containing by estimation two acres or thereabouts; three several parcels of arable and meadow ground situate, lying and being in a place called the ——, and containing together by estimation half an acre, or thereabouts, and all of them abutting on the lord's waste towards the north; one other parcel of ground called ——, containing by estimation one rood or thereabouts; one parcel of ground called the —— land, containing by estimation one rood or thereabouts; and one parcel of ground called *B.* containing by estimation half an acre or thereabouts; and your oratrix being so seised and intitled to the said freehold and customary messuages, lands and premisses, and being desirous to make sale thereof in order to raise monies wherewithal to discharge the aforesaid mortgage, she did therefore give publick notice for the sale of the same by publick cant or auction, to the best bidder, to be on the —— day of —— last; at which time the said messuages, lands and premisses were put up to sale accordingly; and *T. P.* of *E.* in the parish of *B.* in the county of *C.* yeoman, and divers other persons, offered themselves as purchasers, and bid monies for the said premisses; and the said *T. P.* having at last offered and bid the sum of ——, a bargain was struck with him as being the highest bidder for the same; and thereupon your oratrix and the said *T. P.*

*P.*

P. (who had been informed and very well understood that the said freehold messuage and tenement stood incumbered with the aforesaid mortgage) entered into and mutually signed articles of agreement between them, bearing date the — day of — in the year of our Lord — and made or mentioned to be made between your oratrix of the one part, and the said T. P. of the other part, whereby your oratrix, for and in consideration of the sum of — of lawful British money, to be paid as in the said articles is mentioned, covenant-ed and agreed with the said T. P. that your oratrix would, on or before the — day of — then next ensuing (at the proper costs and charges of the said T. P. and by such conveyances, ways and means in the law as his counsel should advise) grant, con-vey and assure unto the said T. P. his heirs and assigns, all that her said two messuages and freehold lands one acre called W. croft side and east garth, and half an acre called T. rigg, and also the half rigg and G. butts, being parcels of the said freehold tenement, only excepted and foreprized together with the beforementioned parcels of cus-tomary or tenant-right lands, containing by estima-tion three acres and a half, or thereabouts, free from incumbrances; And it was, in and by the said ar-ticles of agreement, covenanted and agreed, that your oratrix should have and hold for her life the mansion-house wherein she then lived, together with the buyer at the end, and a little barn at the north end of the old house; and that the said T. P. shoul-pay to the lord of the said manor the yearly ap-portioned rent of 4s. for the said customary pre-mises agreed to be conveyed to him as aforesaid together with four-pence yearly in lieu of boodays; as also four-pence yearly as for his propor-tion of the prescription money, payable out of the said customary tenement, for and in lieu of the tithe there-

thereof; and that your oratrix should have a proportionable share of the moles belonging to the aforesaid messuages, as also of the mire in the place called the *W.* and the said *T. P.*, did, in and by the laid articles of agreement, for himself, his heirs and assigns, covenant and grant to and with your oratrix, her heirs and assigns, that he the said *T. P.* should and would pay unto your oratrix, or her assigns, the sum of —, part of the said consideration money, upon the executing such conveyances of the premises as aforesaid; and the further sum of — on or before — day of — next following; and the further sum of — residue of the said consideration money, on or before the — day of —, as and for the purchase money of the said messuages and premisses abovementioned, as by the said articles of agreement under the hands of your oratrix and the said *T. P.* ready to be produced to this honourable court (relation being thereto had) it doth and may more fully and at large appear; and your oratrix further sheweth unto your Lordship, that *J. L.* of *L.* aforesaid, yeoman, executor of the said *J. L.* the mortgagee, being made acquainted with the contract made between your oratrix and the said *T. P.* for the purchase of the said premisses, did promise and agree to accept of the monies due upon the said mortgage, amounting then to the sum of — or thereabouts; and upon payment thereof, to join with your oratrix in such conveyance or conveyances of the said freehold premisses, as he and the said *T. P.* or his counsel learned in the law should reasonably devise, advise or require. And your oratrix hath frequently and in an amicable manner applied to the said *T. P.* to know by what conveyance, ways and means in the law he would have the said purchased messuages, lands and premisses granted and conveyed to him, your oratrix at the same time offering and proposing

to the said *T. P.* that she and all others having and claiming any estate, right, title, or interest of, into, or out of the said premises, should join in making and executing any such grant and conveyances thereof free of all incumbrances, as he the said *T. P.* should require, or his counsel should devise or advise in that behalf, according to the true intent and meaning of the articles of agreement so made as aforesaid; and the said *T. P.* for some time seemed inclinable to come into measures, as if he would proceed in the purchase of the said premises; and in prosecution thereof actually contracted and agreed with your oratrix to permit her to occupy and hold the possession of one acre in *L.* one acre called —, half an acre called *G.* one rood in *S.* land, half an acre in *N.* lands, three days work of meadows in *B.* fields, two roomsteads in the barn, and a parcel of ground lying behind the said barn in a place called the *W.* gards or garth, being parcel of the said freehold premises; and also two acres called *C.* with the gards and front, being parcel of the said customary premises, and one rood of freehold lying in it; half an acre called *N.* and one rood in *S.* being other parcel of the said customary premises purchased as aforesaid for one year, to be computed from — last past, at or under the yearly rent of —. And though your oratrix having proposed and offered to the said *T. P.* to do and perform, and to cause and procure to be done and performed, every thing that was requisite and reasonable (and on her part to be performed) in order to grant, convey and assure to the said *T. P.* his heirs and assigns, the said purchased messuages, lands and premises according to the tenor and intent of the said articles of agreement, had good reason to expect that the said *T. P.* would have signified to your oratrix how or in what manner he would have the same conveyed to him, so as your oratrix

oratrix

oratrix might have had the effect of the said agreement answered and performed, and the consideration money stipulated to be paid as aforesaid, paid and secured to her at the days and times in the said articles of agreement mentioned in that behalf, as in justice she ought: Yet now so it is, may it please your Lordship, that the said T. P. having entered into a combination and confederacy to and with the said J. L. and J. L. of the town and county of N. merchant, eldest brother and heir of the said J. L. deceased, and to and with divers other persons as yet unknown to your oratrix, (whose names when discovered your oratrix prays may be inserted herein, with apt and proper words to charge them and every of them as defendants) to defraud your oratrix of the premisses; and they having thereupon formed a design to disappoint her of the said purchase monies, and to defeat her of the benefit of the said articles of agreement so made and entered into as aforesaid, he the said T. P. for that purpose has refused, and persists in his refusal, either to signify to your oratrix what manner of conveyance he requires, or his counsel advises, to be made to him of the said messuages, lands and premisses, or yet to accept of any conveyance whatsoever thereof, or to pay or secure to your oratrix any part of the monies agreed by him to be paid for the purchase of the said premisses; and to give some countenance to the unjust pretences and refusals of the said T. P. they the said J. L. and J. L. do pretend and give out, that the legal estate of and in the said premisses being in the said J. L. by virtue of the mortgage aforesaid to the said J. L. their brother, they the said J. L. and J. L. are not, nor is either of them, under any obligation to execute or to join with your oratrix in any conveyance thereof, or to do any act towards the performance and execution of the said articles of agreement; whereas your

oratrix charges, (and so the truth is) that they the said J. L. and J. L. have not, nor hath either of them, any other estate, right, title or interest, of, in, to, or out of the said messuages, lands and premisses, or any part thereof, save only by way of mortgage for the securing only the sum of — or thereabouts, which your oratrix proposes may be satisfied and answered from and out of the first payment of the purchase money in the said articles of agreement mentioned, and which your oratrix hath offered, and is ready to pay, or appoint to be paid to them, or such of them, as shall be intitled thereto, upon their reconveying to your oratrix the said mortgaged premisses, or otherwise upon their joining with her in a proper conveyance thereof unto the said T. P. And though your oratrix hath requested the said J. L. and J. L. to come to an account with her, touching the demands which they or either of them may have or claim, of, in or out of the said premisses, so as the same might be settled, and your oratrix have an opportunity to pay off and discharge the same, and to take a reconveyance of the said mortgaged premisses, yet do they severally refuse to comply therewith nor will they make any discovery of the particulars of their demands, and what remains justly due to them or either of them for principal and interest upon the mortgage, nor admit your oratrix to any redemption of the said premisses; All which actings, refusals, pretences and designs of the said confederates are contrary to equity and good conscience, and tend to your oratrix's great wrong and injury. In tender consideration whereof, and forasmuch as your oratrix cannot compel a conveyance of the said mortgaged premisses, nor obtain a due execution, or any specific performance, of the contract and articles aforesaid, or be otherwise relieved in the premisses than

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by the aid and assistance of this honourable court; **To the end therefore,** and in order that the said T. P. J. L. and J. L. and their confederates, when and as they shall be discovered, may upon their several and respective corporal oaths true and perfect answer make to all and singular the premisses herein before set forth, as fully as if the same were here again repeated, and particularly interrogated to be answered unto, and more especially that the said confederates may, according to the best of their respective knowledge, information and behalf, answer and set forth, whether your oratrix was not seized in fee, or how otherwise well intitled, in and to the said freehold and customary, or tenant-right messuages, lands, hereditaments and premisses, as herein before is set forth; and whether she did not give such notice for the sale thereof as herein before is mentioned; and whether the said T. P. was not the best bidder at such sale; and whether a bargain was not struck with him for the said premisses; and whether he did not come to such agreement, and enter into and sign such articles for the purchase thereof upon such terms, and at and for such rate and price, and to such effect, as herein before is in that behalf set forth, or to any other, and what effect and purpose; and whether they the said J. L. and J. L. were not, or one of them was not present at the said sale, and consented thereto, or shortly and how soon after such sale acquainted therewith; and whether they, or one, and which of them, did not thereupon agree and promise to join with your oratrix in granting and conveying the said premisses, or some, and what part thereof, unto the said T. P. and his heirs; and whether your oratrix hath not several times applied to the said T. P. to know how or by what means or manner of conveyance he required, or his counsel advised, the said bargained premisses to be granted

and conveyed to him, and why or for what reason or reasons he refused to signify the same to your oratrix, or to accept of any conveyance of the said premisses, or yet to pay or secure to your oratrix any part of the monies agreed to be paid for the purchase thereof; and that the said *J. L.* and *J. L.* may severally answer and set forth, whether your oratrix did not make several and what offers and proposals to induce them, or the one and which of them, to join with your oratrix in granting and conveying the said bargained premisses unto the said *T. P.* and his heirs, and that they may shew cause (if they can) why they should not join with your oratrix in such grant or conveyance, or otherwise reconvey to your oratrix the said freehold premisses, upon payment of what shall appear to be justly due upon the mortgage thereof to the said *J. L.* deceased, and that they may set forth what is really and justly due to them or either of them for principal and interest upon the said mortgage, and may come to a fair account with your oratrix touching the same; and your oratrix being willing that so much as shall appear, upon a fair and just account, to be due may be paid and answered by the said *T. P.* out of the monies by him agreed to be paid for the purchase of the said bargained premisses, and which your oratrix doth hereby offer to allow to him, as so much paid on that account, that the said *J. L.* and *J. L.* may be obliged, upon payment thereof, to join with your oratrix in granting and conveying to the said *T. P.* and his heirs the said bargained premisses, or otherwise so to reconvey the same to your oratrix free from all incumbrances done by them or either of them, or by the said *J. L.* deceased; and so as thereby your oratrix may be enabled to execute the said articles of agreement, and perform the true intent thereof on her part to be performed; and that the said *T. P.*

P. may either signify to your oratrix how and by what manner of conveyance or conveyances he will require, or his counsel shall advise, the said bargained and sold premisses to be granted and conveyed to him, or otherwise that he may be decreed to take and accept of a proper and sufficient conveyance or conveyances thereof, and to pay or cause to be paid unto your oratrix or her assigns the consideration monies agreed by the said T. P. to be paid for the purchase of the said premisses, at such days, and in such manner, as in the said articles of agreement are mentioned in that behalf; and that your oratrix (who was always ready and willing, and doth hereby offer to perform and execute every thing in the said articles contained on her part to be done and performed,) may receive such further and other relief in the premisses as the nature of her case requires, and as shall be agreeable to equity and good conscience. May it please your Lordship,  
etc.

*Bill for a specific performance of an agreement  
for the purchase of a lease.*

HUMBLY complaining, sheweth unto your Lordship, your orator A. B. of —— in the county of —— that C. D. of —— in the county of —— being, or pretending to be, possessed of a leasehold messuage, tenement and garden, with the appurtenances, situate in —— aforesaid, which he held by a lease granted from E. F. of —— in the county of —— for the term of 5 years, commencing from Michaelmas last, and being willing and desirous to sell and assign over the said term, your orator in or about the month of —— last (after several meetings had for that purpose) came to an agreement with the said

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C. D.

## Bills and Answers.

C. D. for the absolute purchase of the said lease, and all his interest therein; and which agreement was reduced into writing, and is in the words and figures following, (that is to say) *August 4th* —; *Memorandum*, it was this day agreed by and between C. D. of —— in the county of —— and A. B. of the same place, that the said C. D. shall, on or before the 8th day of *August* instant, grant, bargain, sell and assign over unto the said A. B. all that messuage or tenement, and garden, with the appurtenances, except one cellar, now in the occupation of H. P. situate in —— in the county of —— in *High Street* there, and which was lately in the possession of the said C. D. and by him held by lease of E. P. gent. for the term of 15 years, to commence from *Michaelmas* last, and the said A. B. is, in consideration of the sum of 10*l. per annum*, to have the said premisses for the remainder of the said C. D.'s term, free from taxes and reparations: And the said C. D. in consideration of this agreement, hath received of the said A. B. 2*s. 6d.* as in and by the said memorandum or agreement, signed by the said C. D. and your orator in the presence of W. D. and J. S. now in your orator's custody or power, ready to be produced, relation being thereunto had, may more fully and at large appear. And your orator further sheweth unto your Lordship, that your orator was always ready and willing to perform his part of the said agreement, and to have accepted an assignment of the said lease pursuant thereto; and for that purpose your orator caused a common assignment of the said lease to be drawn for the remainder of the said term of 15 years, and which was to commence from the 29th day of *September* last, pursuant to the said agreement, and tendered the same to the said D. to be executed by him, and likewise your orator

orator at the same time offered to execute a counter-part thereof: And your orator hath frequently, both by himself and others, both before and since such tender and offer made, applied to the said C. D. in a friendly manner, and requested him to deliver up the said lease, and to execute the said assignment as aforesaid, and which your orator did not in the least doubt but the said C. D. would have done. **But now so it is,** may it please your Lordship, that the said C. D. combining and confederating to and with divers other persons, at present unknown to your orator, whose names when discovered, your orator prays may be herein inserted, and they made parties hereto, with apt words to charge them, endeavouring to wrong and injure your orator in the premisses; he the said C. D. peremptorily refuses to perform the said agreement, and to deliver up the said lease, and execute a proper assignment thereof to your orator, or to permit your orator to enter and take possession of the said mesuage or tenement and premisses, pursuant to the true intent and meaning of the said agreement. **In tender consideration** whereof, and forasmuch as your orator is remediless in the premisses by the strict rules of the common law, and cannot compel a specific performance of the said agreement, but by the aid and assistance of this honourable court, where matters of this nature are properly cognizable and relievable; **To the end therefore,** that the said C. D. (and his confederates, when discovered) may, upon their corporal oaths, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here again repeated and interrogated; And more particularly that the said C. D. may set forth and discover whether he did not enter into such memorandum or agreement as hereinbefore is mentioned, or any other, and what me-

morandum or agreement; and whether your orator hath not caused a common assignment of the said lease to be drawn, and tendered to him the said C. D. to be executed pursuant to the said agreement; and whether your orator hath not, since such tender made, by himself and others requested the said C. D. to execute the said assignment, and specifically to perform the said agreement; and whether he hath not refused so to do; and why, and for what reason; and that the said C. D. may be compelled to a specific performance of the said agreement, and may execute a proper assignment of the said lease, for the remainder of the said term of 15 years yet to come and unexpired, to your orator, according to the true intent and meaning of the said agreement; And that your orator may have the possession of the said estate and premisses; and that your orator may have such other, and farther relief in all and singular the premisses, as to your Lordship shall seem meet; May it please your Lordship, &c.

*A bill to revive and answer.*

HUMBLY complaining, shew unto your Lordship, your orators A. B. of —— in the county of —— gentleman, C. D. late of —— aforesaid, and late curate of —— in the county aforesaid, now of —— in the county of —— clerk, E. F. of —— aforesaid, and G. H. of —— in —— in the county aforesaid, yeoman, administrators of all and singular the goods and chattels, rights and credits of J. K. late of —— in —— aforesaid, deceased, with the last will or testamentary schedule of the said J. K. annexed; That in or about Easter term, which was in the year of our Lord —— your orators exhibited their bill of complaint into this

this honourable court, against *A. B. L. M. N. O. P. Q. and R. S.* of — aforesaid, and *T. V.* for an account of the personal estate of the said *J. K.* and for an *Injunction*, and to be relieved touching the several matters and things in the said bill complained of. And your orators farther shew unto your Lordship, that the said defendants being duly served with process to appear to and answer the said bill, they the said defendants severally appeared accordingly, and put in their answers thereto, and the *injunction* obtained by your orator in the said cause was dissolved; and thereupon your orators, in or about *Michaelmas* term — obtained an order to amend their bill of complaint; and the same was amended accordingly against the said defendants, and one *J. W.* was added a party thereto: And the said defendants being all duly served with process to appear to and answer the said amended bill, they severally appeared accordingly, and put in their answers thereto; and the *injunction* granted upon exhibiting the said amended bill, was (upon shewing cause) also dissolved; as in and by the said original and amended bill, answers, order, and other proceedings had in the same cause, and now remaining as of record in this honourable court, may more fully appear, and which your orators hereby crave leave to refer themselves to: But before any further proceedings were had in the said cause, the said *L. M.* departed this life, to wit, in or about the month of — last past, whereby the said suit as to him became and is abated; and your orators further shew unto your Lordship, that the said *L. M.* did in his life-time duly make and publish his last will and testament in writing, and thereof constituted and appointed *E. M.* his wife sole executrix, who duly proved the said will in the proper ecclesiastical court, and possessed herself of all her said testator's personal estate, more than sufficient to

to pay his funeral expences and all his just debts; whereby the said suit ought to be revived as against the said *E. M.* his executrix, who now stands in his place and represents him; and your orators (as they are advised) are intitled to have the same relief against her, with respect to the said *L. M.* his personal estate, as they would have been intitled to against him, the said *L. M.* had he been living; and she ought to answer the premisses, and ought either to admit assets of the said *L. M.* sufficient to satisfy your orator's demands claimed by the said original and amended bill, or ought to discover and account for his personal estate, as is usual in such cases: **To the end therefore**, that the said suit and all proceedings therein may stand revived, and be in the same plight and condition as they were at the time of the death of the said *L. M.* and that your orators may have the benefit thereof; and that the said *E. M.* may answer and set forth whether the said *L. M.* did not make his last will and testament, and thereof did not appoint her the said *E. M.* executrix, as herein before is set forth, and whether the said *L. M.* did not depart this life at or about the time herein before set forth, or at or about what other time; and whether she the said *E. M.* did not prove the said will in some and what ecclesiastical court, and possess herself of the said *L. M.*'s personal estate; and that the said *E. M.* may either admit assets of the said *L. M.* come to her hands sufficient to pay all his debts, funeral expences, and legacies, and also to answer your orator's demands; or if she shall pretend that the said *L. M.* did not leave a sufficient personal estate for that purpose, then that she may set forth an account of all debts she pretends to be owing by her said testator, and to whom, and for what, and upon what securities; and that she may likewise set forth a full, true and particular inventory and ac-

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count of all and every the goods, chattels and other personal estate and effects which the said testator *L. M.* was at his death possessed of, interested in, or any ways intitled unto, with the nature, quantities, qualities, and full and utmost values thereof; and what part has come to her hands, or to the hands of any other person, and whom, for her use, or with her privity, consent or procurement; and how the same has been paid, applied, administered, sold, or disposed of by her, or any other person, by her direction or privity, and when, and by and to whom, and for what; and that the said *E. M.* may shew cause (if she can) why the said suit and proceedings thereon should not stand and be revived; and that the same may be revived, May it please your Lordship, to grant unto your orators his Majestys most gracious writ of *subpæna* to revive and answer, issuing out of and under the seal of this honourable court, to be directed to the said *E. M.* thereby commanding her at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this high and honourable court, then and there to answer the premisses, and to shew cause, if she can, why the said suit and proceedings therein had, should not stand and be revived against her, and be in the same plight and condition, as they were at the time of the death of the said *L. M.* and farther to stand to and abide such order and decree in the premisses, as to your Lordship shall seem meet. And your orators shall ever pray, &c.

*Bill*

*Bill of revivor brought by an administratrix to revive the suit wherein her husband was plaintiff, who died pending the suit.*

HUMBLY complaining, sheweth unto your Lordship, your oratrix E. M. of, &c. widow, relict and administratrix of the goods and chattels, rights and credits of F. M. late of, &c. That the said F. M. in or about Hillary term last past, did exhibit his bill of complaint into this honourable court against F. R. &c. defendants, thereby among other things setting forth, that [Here recite the prayer of the original bill] the said complainant by his said bill prayed the aid of this court, and that procs of *subpæna* might be awarded against the said defendants to appear in this court and answer the premisses, which being granted, and the defendants therewith served, they appeared accordingly; and the defendant T. R. answered, and [Set forth what proceedings have been in the cause] as by the said bill, answer, &c. remaining as on record in this honourable court, relation thereunto being had, may more at large appear. But so it is, may it please your Lordship, that before any other proceedings were had in the said cause, the said F. M. died intestate, whereby the said suit and proceedings became abated; since whose death letters of administration of the goods and chattels, rights and credits of the said complainant have been granted to your oratrix, his widow, out of the prerogative court of Canterbury, by virtue whereof your oratrix is become intitled to the personal estate of the said complainant her husband. To the end therefore, that the said bill, answer, &c. so abated as aforesaid, may stand revived against the said defendants T. R. and F. G. and be in the same plight, state and condition as the same

same were in at the time of the abatement thereof; May it please your Lordship to grant unto your oratrix his Majesty's most gracious writ of *subpæna ad revivendum*, to be directed to the said T. R. and F. G. thereby commanding them respectively at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there to shew cause (if they can) why the said proceedings so abated as aforesaid should not be revived, and be in the same plight, state and condition as the same were in at the time of the abatement thereof; and your oratrix be further relieved in all, &c.

*A supplemental bill to deliver up deeds and writings.*

HUMBL Y complaining, sheweth unto your Lordship, your oratrix, A. B. spinster, one of the daughters of J. B. late of ——, yeoman, deceased, that your oratrix, together with E. B. her sister, as they were two of the daughters and heirs at law of the said J. B. their father, did on or about the — day of — in the year of our Lord —, exhibit their original bill of complaint in this honourable court against N. T. and R. P. and M. his wife as defendants, for an account of the rents and profits of the real estate of the said J. B. in the said bill mentioned, to one third part whereof she was intitled, and also for an account of his personal estate, as he the said J. B. died intestate, and your oratrix and the said E. were two of his children, and your oratrix and the said E. her sister having such title thereto respectively as in the said bill is alledged; and that your oratrix might be let into a redemption of her father's real estate, upon paying what (if any thing) should appear justly due, and for relief. And afterwards

## Bills and Answers.

afterwards the said original bill was amended, and the said *E. B.* who had intermarried with *J. G.* and the said *J. G.* were made defendants thereto, and the said *E.*'s name was struck out from being a party to the said original bill, and the said defendants being served with process of *subpoena*, they did accordingly appear to and answer the said amended bill, and the said answers were replied unto, and issue being joined, several witnesses were examined; but before publication was passed in the said cause your oratrix hath discovered, and your oratrix by way of supplement doth now hereby charge, that the said *N. T.* now or late had in his custody or power, or at some time or times had seen or read some deed of settlement or writing, and particularly a deed bearing date in or about the year — of and concerning the real estate of the said *J. B.* the father, which said deed of settlement, or some other deed or writing to such purport or effect, was made on the marriage of the said *J. B.* the father, with *A.* his first wife long since deceased, who was the sister of the said *N. T.* and thereby or by some other deed or writing the said real estate of the said *J. B.* or great or some part thereof, was so settled and limited, as that after the death of the said *J. B.* the father, without issue by the said *A.* the same was to be to the use of the issue or heirs of the body of the said *J. B.* the father; and he the said *J. B.* the father had issue only one child by the said *A.* his wife (to wit) *J. B.* who died long since without issue and unmarried, but he the said *J. B.* the father, by *E.* his second wife, left issue three daughters (to wit) your oratrix and the said defendants *M.* and *E.* and your oratrix and the said *M.* and *E.* are now the heirs of the body of the said *J. B.* the father, and intitled to the same by and under the said deed of settlement, or other deed or writing as aforesaid; and there happening some difference between the said *J. B.* the father in his life-time and the said *N. T.* and there being a bill exhibited in thi

this honourable court in relation thereunto, he the said *N. T.* as your oratrix hath lately, and since issue was joined as aforesaid, discovered that he the said *N. T.* did in his answer to the said bill of the said *J. B.* the father, admit that he had in his custody several deeds and writings relating to or concerning the said real estate, and particularly the said deed of settlement made on the marriage of your oratrix's said father with the said *A.* in which he the said *N. T.* was a trustee; and he the said *N. T.* did in and by the same answer to the said bill of the said *J. B.* the father declare and say, that in case the said *J. B.* the son should die without issue and under age, the lands settled on the issue of the said *J. B.* the father's first marriage, would come to the said *E.*'s children, as heirs of the body of the said *J. B.* the father, as in and by the said bill of the said *B.* the father, and the said *N. T.*'s answer thereunto, remaining as of record in this honourable court, doth and will more fully appear: But the said deed of settlement, and the said other deeds and writings, have been all along concealed from your oratrix, and he the said *N. T.* as he was a trustee named in the said settlement, ought to have discovered and delivered up the same unto your oratrix, and thereby it doth and will appear, that your oratrix and her said sisters *M.* and *E.* are tenants in tail of and in the said premises, and that the same ought to be divided between them; and if the said deed of settlement is not now to be produced, the same hath been fraudulently torn, burnt or destroyed, but how or when, or by whom, he the said *N. T.* doth refuse to discover. **To the end therefore,** that they the said *N. T.* and *R. P.* and *M.* his wife, and *J. G.* and *E.* his wife, may answer all and every the matters and things herein before charged by way of supplement, and that he the said *N. T.* may discover and set forth, whether, as he knows or believes, he at any time, and when, and

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and how long, had the said deed of settlement in his custody, or power, or any other, and what deed, paper or writings to the effect or purport herein before mentioned, and what is become of such deed of settlement, and all other the deeds, papers and writings before mentioned, or any or either, and which of them, as he the said *N. T.* knows or believes, and when he last saw the said deed of settlement, or the said other deeds, papers and writings, or any or either, and which of them; and that the said deed of settlement, and the said other deeds, papers and writings may be delivered up safe and uncancelled, and that your oratrix may be relieved in the premisses as the nature and circumstances of her case shall require; May it please your Lordship, &c.

### *A bill of revivor, and supplemental bill.*

**H**UMBLY complaining, shew unto your Lordship, your orators Sir *J. T.* of — in the county of — bart. and *T. P.* of — in the said county, Esq; who are the surviving and only acting executors and trustees named in the last will and testament of *H. P.* late of — in the county of — Esq; deceased, That your orators did in — about *Trinity* term — exhibit their bill of complaint into this honourable court against *F. S.* Esq. *A. S.* Esq; *W. S.* Esq; Sir *E. S.* Bart. *W. P.* Esq formerly called *W. B.* Esq; *W. F.* Esq; *T. F.* Esq and *M.* his wife, late wife of the said *H. P.* deceased, *H. G.* Esq; and *W. P.* Gent. defendant (amongst other things) for a discovery of the real and personal estate of the said *H. P.* and in particular what real estate he purchased after the date of his said will, and for the directions of the court touching the trusts created by the said *H. P.*'s said last will and codicil; and the said defendants being duly

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served with process for that purpose did appear to your orators said bill, and the said defendants *F. S. W. P. T. F.* and *M.* his wife, *H. G.* and *W. P.* put in their answers thereto; to which said answers of the said defendants, *F. S. W. P. T. F.* and *M.* his wife, *H. G.* and *W. P.* your orators replied, and issue was thereon joined, and divers witnesses were examined in the said cause, and their depositions duly taken and returned, as by the said bill, answers, replication and depositions of witnesses, all of them remaining duly filed and of record in this honourable court, relation being thereunto had, may more fully and at large appear. And your orators further shew unto your Lordship, that before the said defendants Sir *E. S. A. S.* and *W. S.* put in any answer to the said bill, or the said cause received a hearing, the said *W. P.* died intestate on or about the — day of — and the said *A. S.* also died on or about the — day of — in the year —, whereby the said suit as to them became and is abated; and your orators further shew, that *J. P.* of — Gent. hath taken out letters of administration to the said *W. P.* out of the court of the archdeacon of — in the said county of —, and your orators are thereby become intitled to have the said suit and proceedings revived against the said *J. P.* and to have the same benefit thereof, and relief against him as they should or might have had against the said *W. P.* (unless the said *J. P.* can shew good cause to the contrary;) and the said *J. P.* ought to admit assets of his said intestate come to his hands, to answer any demands your orators have against the estate of the said *W. P.* or else to set forth a particular and true account of his said intestate's estate, and how the same hath been applied and disposed of. And your orators further shew (by way of supplement,) that the said *H. P.* having contracted for or purchased the manors of — and — and —.

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and the manor-house called —— and other lands and tenements thereunto belonging, which was and were formerly the estate of T. B. Esq; it is pretended the same was so done after the date of the will and codicil, or some of them; and the said Sir E. S. laying some claim thereto, it is also pretended that the said Sir E. S. and F. S. conveyed their right and interest therein and thereto to the said A. S. who, as is pretended, in his life-time duly made and published his last will and testament in writing, and therein and thereby devised part of the said estate late of the said A. B.'s to J. G. of — in the county of — Gent. and his heirs, or to L. G. wife of the said J. G. and who was the said A.'s sister, and her heirs, or to the said L. G. for her life, remainder to A. G. her son by the said J. G. and his heirs; and other part of the said late A. B.'s estate called P. to Mrs. H. S another sister of the said A. S. and her heirs; and the other part of the said estate, to wit, —— manor and lands to M. S. and H. S. his sisters, and whom, as it is also pretended he made executrixes of his said will, either to them and their heirs, or in trust to pay his debts, the residue thereof, after payment of his debts, to the said W. S. his brother and his heirs: and the said Sir E. S. W. S. H. S. J. G. and L. his wife, and A. G. their son, M. S. and K. S. pretend some right or title in or to the said lands and premisses late Mr B.'s; yet they refuse to discover what their said claims are, or by what deed or title they claim, or who is in possession thereof, and of every part thereof; and tho' your orators are advised, to the end may be determined by this court, whether all or any part of the said late Mr. B.'s said manors, lands and estate is part of the trust-estate intended to be settled by the said H. P.'s will or codicils; and for that purpose the said Sir E. S. ought to set forth what right

or title he claims therein or thereto, or to any part thereof, if any; and for that purpose he ought to answer this bill, as well as your orator's original bill, and the said *W. S.* ought so to do, he claiming in reversion under the said *H. P.*'s will, as well as under the said *A. S.*'s will; and the said *H. S. J. G.* and *L.* his wife, *A. G.* their son, and *M. S.* and *K. S.* the executors of the said *A. S.* ought also so to do, if they or either of them claim any right or title thereto, or interest therein, or in or to any part thereof.

To the end therefore, that the said Sir *E. S. W. S. H. S. M. S. K. S. J. G.* and *L.* his wife, and *A. G.* their son, may so do, and that the said suit and proceedings may stand revived, and be in the same plight and condition as they were in at the time of the death of the said *W. P.* or that the said *J. P.* may shew cause to the contrary, and may admit assets of his said intestate sufficient come to his hands to answer your orator's demands; or may set out a particular, full and true account of his said intestate's estate and effects, and how the same hath been paid, applied and disposed of; May it please your Lordship, &c.

Plaintiffs pray process to revive and answer.

*Another bill of revivor.*

HUMBL Y complaining, sheweth unto your Lordship, your oratrix *S. B.* of \_\_\_\_\_ in the county of \_\_\_\_\_ widow, only sister and heir at law of *T. B.* late of \_\_\_\_\_ in the said county, Gent. deceased, administrator of all and singular the goods and chattels, rights and credits of the said *T. B.* and also the aunt, heir at law of *M. B.* late of \_\_\_\_\_ aforesaid spinster, deceased, who was the only daughter of the said *T. B.* that your oratrix in or about Michaelmas term, which was in the year of

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our Lord — exhibited her bill of complaint into this honourable court against *H. T. T. P. J. L. H. B. J. B. S. B. E. D. D. S. E. R. A. S. E. P. D. H.* and *J. W.* (amongst other things) to be relieved touching the matters therein contained, and to set aside the pretended will of the said *M. B.* and that the same might be delivered up to your oratrix to be cancelled, and that the defendants might release all their right or pretence of right or title to the real or personal estate of the said *M. B.* and might account for the rents and profits thereof, and that the said confederates *S. P. H.* and *W.* might assign the terms in them vested to such trustee or trustees as your oratrix should appoint. To which bill all the said defendants (being served with process of *Subpoena*) appeared, and the said *H. T. T. P. J. L. H. B. J. B. S. B. E. P. D. S. E. R. A. S. E. P. D. H.* and *J. W.* severally put in their answers thereto, and your oratrix replied to all the said defendants *P. H.* and *W.*) and rules were given to publication, which was by order of this court enlarged to the first day of next *Easter* term — but no witnesses are yet examined, and the cause is down to be heard before your Lordship, as in at by the said bill, answers and proceedings therupon had, remaining as of record in this honourable court, relation being therunto had, may more fully and at large appear: And your oratrix further sheweth unto your Lordship, that before any other proceedings were had in the said cause, (that is to say about the — day of — last the said *A. S.* died by means whereof the said cause and proceeding therein as to him became and are abated. And your oratrix further sheweth unto your Lordship, that the said *A. S.* did in his life-time make his last will and testament in writing, dated on or about the 1<sup>st</sup> day of *May* — and did thereof constitute and appoint *M. S. of M.* in the county of — Esq; his brush

sole executor and residuary legatee, who hath since his said brother's death duly proved the said will, and accepted of the said executorship, and your oratrix is thereby intitled to have the same benefit and relief against the said *M. S.* as your oratrix should or might have had against the said *A. S.* To the end therefore, that the said suit and proceedings may stand revived, and be in the same plight and condition against the said *M. S.* as the same were at the death of the said *A. S.* and that your oratrix may have the same benefit thereof, or that he the said *M. S.* may shew good cause to the contrary; May it please your Lordship to grant unto your oratrix his Majesty's most gracious writ or writs of subpoena to be directed to the said *M. S.* thereby commanding

&amp;c.

*A bill by an administratrix for an account; and to revive a decree, and carry it into execution.*

HUMBLY complaining, sheweth unto your Lordship, your oratrix *A. C.* widow and relict of *P. C.* late of — in the county of — Esq; deceased, and mother, and administratrix of the goods and chattels, rights and credits of *P. C.* deceased, who was eldest son and heir of the said *P. C.* your oratrix's late husband, deceased, by your said oratrix, That some time in or about the — day — your oratrix and *W. C.* the younger son of the said *P. C.* your oratrix's said late husband deceased, by your said oratrix, an infant then under the age of twenty-one years, (that is to say the age of —) by your said oratrix, his mother and friend, exhibited their bill of complaint in this honourable court against the said *P. C.* as the eldest son and heir of the said *P. C.* your oratrix's said late

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husband, by your said oratrix, he being then an infant under the age of twenty-one years, *L. R. W. W. W. L.* and *G. C.* and *W. C.* younger brothers of your oratrix's said late husband, setting forth, (amongst divers other matters and things,) that previous to the marriage of your oratrix with the said *P. C.* your oratrix's said late husband deceased, the said *P. C.* in consideration of the said marriage, and of your oratrix's marriage portion, by certain articles bearing date the — day of —, and made or mentioned to be made between the said *P. C.* of the one part, and the said *W. L.* and your oratrix, of the other part, he the said *P. C.* did thereby covenant for himself, his heirs, executors and administrators, immediately after the solemnization of such marriage, to settle the manor of — with the appurtenances, and divers other lands and hereditaments therein particularly mentioned, in the parishes of — and — in the said county of — to the use of himself for life, without impeachment of waste; remainder to trustees to support contingent remainders; remainder to the use of the first and other sons of him the said *P.* on the body of your oratrix to be begotten in tail male; with remainder to *L. C.* since deceased, brother of the said *P. C.* and all others the brothers of the said *P. C.* according to their seniority successively in tail male, with remainders to the right heirs of the said *P. C.* And also setting forth, that soon after the execution of the said articles the said marriage took effect, and that in *March* — the said *P. C.* your oratrix's said late husband died, leaving your oratrix his widow, and the said *P.* since deceased, his eldest son and the said *W. C.* his only children by the said marriage then living, having first duly made and published his last will and testament in writing, bearing date the — day of —, and therein taking notice of his said marriage articles, confirmed the same, save

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and except the uses to his brother G. and his issue in tail, which he revoked, as therein is mentioned; and devised all his manors, houses, messuages, rectories, advowsons, lands, tenements, and hereditaments, and the reversion thereof, with all his estate therein, unto the said L. R. and W. W. their heirs and assigns, in trust for the performance of the said marriage articles (save as before excepted) and for the intents and purposes therein, and in the said will set forth; and particularly that the said trustees and the survivor of them, and the executors of such survivor, should have the sole direction of all his real estate, to let and set the same, and receive the rents, issues and profits thereof, until one of his sons should attain the age of twenty-one years, and should apply the rents and profits of all his real estate, save such as should be applied in the maintenance and education of his said son P. C. or his younger son (in case he should survive him) for payment of all or part of the principal or interest of any mortgages or incumbrances upon his said estate, or any part thereof, and made your oratrix sole executrix of his said will, who after his death duly proved the same, and took upon herself the burthen of the execution thereof; and further setting forth, and praying in and by the said bill to be relieved as therein is prayed. And your oratrix further sheweth unto your Lordship, that the said defendants, being served with process, did appear to and put in their several answers to your oratrix's said bill, and the said L. R. and W. W., W. L. G. C. and W. C. thereby severally and respectively admitted, that such articles were duly executed, and that such marriage was had, and that the defendant P. C. since deceased, and the said plaintiff W. C. were the only issue thereof; and that the said testator died in *March* — having made such will as aforesaid, and thereof your oratrix sole

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executrix; but the defendant *R.* denied he had received any of the rents and profits of the said testator's estate since his death; but the defendant *W.* admitted that he had received the same, and submitted to account as the court should direct; And the said *P. C.* the infant put in his answer to the said bill, by *T. B.* his guardian, and thereby (amongst other things) submitted his interest in the premises to the care and protection of the court. And your oratrix further sheweth unto your Lordship, that the said cause being thereupon at issue, and witnesses examined on both sides, the same came afterwards to be heard, to wit, the 20th day of February in the sixth year of the reign of his present Majesty King George the second, before the then Master of the Rolls; and thereupon it was (amongst other things) declared and decreed by his Honour, that the said testator's will was well proved, and that the trusts thereof ought to be performed; and that the said manor of *A.* and lands agreed to be settled by the said marriage articles, were to go according to the limitations of the said marriage articles, discharged of the said testator's debts, and that Mr. ——, one of the Masters of this honourable court, should take an account of the said testator's debts and legacies, which were to be paid first out of the said sum of —— part of your oratrix's portion; and the residue thereof was to be raised and paid out of the rents and profits, or by sale or mortgage of the said testator's real estate, by the said articles and will particularly appropriated for that purpose, with the approbation of the said master; and any deficiency therein was to be made good out of the other part of the testator's real estate not in settlement to your oratrix; and that a fit and proper person should be appointed to receive the rents and profits of all the said testator's real estates; and the said master was to see what was proper to be allowed for the maintenance

nance of the defendant *P. C.* and the plaintiff *W.* his brother respectively, as well for the time past, as to come, and to state the same to the court, whereupon such further order should be made as should be just; and what was to be allowed for their respective maintenance, was to be paid to your oratrix their mother, out of the rents and profits of the said estates so long as she could maintain them, and until further order of court to the contrary; and all other proper directions were given for the taking the said account; as by the said bill and answers, and the other proceedings in the said cause, and the said decretal order made upon the hearing thereof, remaining as of record in this honourable court may more fully and at large appear, and to which your oratrix humbly craves leave to refer herself. And your oratrix further sheweth unto your Lordship, that after hearing the said cause, and making the said decree, to wit, in or about the month of *December* — the said defendant *P. C.* the eldest son and heir of the said testator *P. C.* departed this life intestate, and without issue, as did also the defendant *W. W.* in or about the month of —, by reason whereof your oratrix is advised, that the said cause, and the proceedings and decree had therein, as to them the said *P. C.* and *W. W.* became and are abated. And your oratrix further shews unto your Lordship, by way of supplement to her said former bill, that upon the death of the said testator *P. C.* the said manor of *A.* and lands and premises of *W.* agreed to be settled in and by the said marriage articles, as therein and herein before is mentioned, and which were discharged by the said decree from payment of the said testator's debts as aforesaid, did by virtue of the said marriage articles, immediately upon the death of the said *P. C.* your oratrix's late husband, come to the said *P. C.* as eldest son and heir of the said marriage, and his heirs male, and that he became intit-

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led to the rents and profits thereof from the death of his said father to his own death, and upon his death the said estates came to the said *W. C.* the testator's said second son, and one of the defendants herein after named as tenant in tail by virtue of the said articles; and your oratrix further sheweth, that the said *W. W.* was appointed receiver of the rents and profits of the said testator's real estates pursuant to the said decree, and, as your oratrix is informed, the said *W. W.* till the time of his death, and the said *L. R.* or one of them, not only received the rents and profits of the said testator's real estate, subjected to the payment of his debts, but also of the said settled estate which belonged only to the said *P. C.* her son, and applied the same promiscuously with the rents of the said other estates in payment of the said testator's debts and legacies, or for some other uses and purposes for which the same were no ways applicable; and your oratrix further sheweth, that the said *W. W.* sometime before his death duly made his last will and testament in writing, and thereof appointed *C. B.* of *M.* in the said county of *N.* gentleman, and *R. H.* of the same place, Gent. executors, who have proved the same, and possessed themselves of his personal estate; and since the decease of the said *W. W.* *L. L.* of —— in the said county of —— Gentleman, hath been appointed receiver of the said testator *P. C.*'s said real estates; and your oratrix further sheweth, that there was a great arrear of rents and profits due to the said *P. C.* her son at the time of his decease, for the said manor of —— and the said lands and premises at —— agreed to be settled as aforesaid, and then unreceived and in the hands of the several tenants, who held and rented the same, amounting to the sum of —— and upwards, and that some part thereof since the deceases of the said intestate *P. C.* and the said *W. W.* hath been received by the said *C. B.* by virtue of

of or under pretence of some order or direction for that purpose, and that the other part thereof hath been received by the said *L. L.* the said receiver, and the said *L. R.* the said surviving trustee, or some or one of them, and which they the said *C. B. L. L.* and *L. R.* pretend to have paid and applied towards the payment of his the said *P. C.* the testator's mortgage, and other his debts due and payable out of the other part of his said real estate, in the pleadings in the aforesaid cause mentioned, contrary to the said decree made upon the hearing thereof as aforesaid; and your oratrix further sheweth, that soon after the death of the said *P. C.* her said son, letters of administration were granted to her out of the prerogative court of *York*, and thereupon, and by virtue thereof, she became well intitled to all and singular the rents and profits of the said manor of *A.* and lands and premisses at *W.* received by the said *W. W.* the said late receiver, and the said *L. R.* which accrued due for the same estates after the death of the said testator *P. C.* or which were received by them after making the said decree in the said intestate's life-time, over and above his maintenance, and all the arrears thereof, which were in the hands of the tenants and unreceived, and due to the said *P. C.* your oratrix's said late son at the time of his death, and ought to have received the same, and to have had an account thereof, and the same ought to be distributed in moieties between your oratrix and her said son *W.* as by the same letters of administration in the custody or power of your oratrix and ready to be produced to this honourable court may appear. And your oratrix humbly insists, that by virtue of the said letters of administration, your oratrix stands in the place of the said *P. C.* her said son deceased, as to the said rents and profits received of his said estate as aforesaid in his life-time, and which were due

due to him and in arrear, and received as aforesaid since his death, and thereupon is intitled to have the aforesaid decree made upon the hearing of the said cause revived and carried into execution, and to have the benefit of all the said proceedings, in such manner as this honourable court shall direct. And your oratrix further sheweth, that they the said *W. C.* her son, *C. B. R. H. L. L.* and *L. R.* have entered into a combination and confederacy how to defeat your oratrix of the said moiety or half-part of the said rents and profits of the said manor of *A.* and lands and premisses at *W.* which were received by them the said *W. W.* and *L. R.* in the life-time of the said intestate *P. C.* over and above his maintenance, and which were due and in arrear to the said intestate *P. C.* her said son at the time of his death, and which have since his death been received by the said *C. B. L. L.* and *L. R.* or some of them, and to all which, and an account thereof, your oratrix is well intitled as aforesaid; and thereupon the said confederates, and especially the confederates *C. B. R. H. L. L.* and *L. R.* refuse to give your oratrix any account thereof, or to pay her the same; and they the said *C. B.* and *R. H.* pretend that the said *W. W.* did not leave assets sufficient to answer and make good to your oratrix what he so received; and the said *W. C.* pretends that he is intitled to the whole of the rents and profits of the said manor of *A.* and the lands and premisses at *W.* which were received by the said *W. W.* and *L. R.* in the life-time of the said intestate *P. C.* over and above his maintenance as also to the whole of the rents and profits which were in arrear and due to the said intestate *P. C.* at the time of his death for the same, or that the same ought to be applied in discharge of the said *P. C.* his late father, the testator's debts; whereas your oratrix doth expressly charge as above, and that the said *W. C.* was intitled to one moiety or half-part thereof only, and that your oratrix

trix is well intitled as aforesaid to the other moiety or half-part thereof; and your oratrix doth also insist, that as the said manor of *A.* and the lands and premisses at *W.* agreed to be settled as aforesaid, were by the said decree discharged from the payment of the said testator *P. C.*'s debts, that therefore the said rents and profits thereof, which were due to the said intestate *P. C.* at the time of his death, and received as aforesaid, ought not to go and be applied towards the payment thereof, but ought to be equally divided share and share alike, after just deductions and allowances made out of the same between your oratrix and him the said *W. C.* her son. In tender consideration whereof, and to the end that the said confederates, and every of them, may answer all and singular the premisses herein before added by way of supplement, as fully, particularly and distinctly, as if the same were here again repeated and interrogated, and more especially that the said *C. B.* and *R. H. L. L.* and *L. R.* may set forth a true and just account of all and singular the rents and profits of the said manor of *A.* and lands and premisses at *W.* which they the said *W. W.* and *L. R.* or either of them, or which any other persons by their, or either of their order, or for their or either of their use, did receive in the life-time of the said intestate *P. C.* and also a just and true account of the arrears thereof due to him the said intestate at the time of his death, and which since his death have been received by the said *C. B. L. L.* and *L. R.* or any of them, or any other person or persons by their, or any of their order, for their or any of their use or uses, separately and distinctly in each and every of the said years they so received the same; and how much they deducted, paid, or allowed out of the same in each and every of the said years, separately and distinctly, and for what, and upon what account, and how much the same amounts

## Wills and Answers.

amounts unto in the whole after such deductions, and how and in what manner, and to and for whose use and benefit they paid and applied the same, or otherwise disposed thereof; and that the said C. B. and R. H. may either admit assets of their said testator sufficient to answer your oratrix's demand upon the said *W. W.*'s estate, or else that they may set out a true and perfect inventory and particular of all and singular his goods, chattels, rights and credits, and how the same hath been paid, applied or otherwise disposed of; and that the said confederates may set forth, whether your oratrix hath not since the death of the said *P. C.* her said son, taken out letters of administration to all and singular his goods, chattels, rights, credits and personal estate whatsoever; and whether your oratrix is not well intitled to have a just account of the said rents and profits, and in her own right intitled to one full undivided moiety or half-part of all and singular the said rents and profits of the said manor of *A.* and the lands and premises at *W.* received by the said *W. W.* and *L. R.* during the life-time of the said intestate *P. C.* over and above his said maintenance, and all the arrears thereof which were due and in arrear to him the said intestate *P. C.* at the time of his death; and that they the said C. B. R. H. *L. L.* and *L. R.* may set forth their reasons why they refuse to account with and pay to your oratrix the same; and that they may be compelled forthwith to come to a just and fair account with your oratrix, and to pay to your oratrix what shall appear to be due to her upon such account; and that the said decree may be revived and carried into execution; and that your oratrix may have the benefit of all the aforesaid proceedings and decree, in such manner as this honourable court shall direct;

May it please your Lordship, &c.

To the Right Honourable Edward Lord Thurlow, &c.

HUMBL Y complaining, sheweth unto your Bill brought by a husband as administrator to his wife, to obtain a leasehold estate devolved to her as heir at law to her father.

Lordship, your orator *E. N.* of, &c. administrator of all and singular the goods, chattels, rights, and credits of *Mary* his late wife deceased, who was one of the daughters of *J. E.* late of, &c. deceased; by *Mary* the late wife of the said *J. B.* also deceased, that the said *J. E.* being possessed of or otherwise well and sufficiently entitled unto a certain piece or parcel of ground, with a brick mes- suage or tenement, and other erections, buildings, and improvements thereon made, or built, at in the said county of for the remainder of a term of 89 years, thereof granted unto him the said *J. E.* by indenture, bearing date on or about the 10th day of *August*, which was in the year of our Lord 1704, and to commence from the 24th day of *June* then last, at or under the yearly rent of 5*l.* payable for the same as therein mentioned. And the said *J. E.* being minded to make some provision for his wife and children, if they survived him, by indenture, bearing date on or about the 31st day of *March*, which was in the year of our Lord 1705, made or mentioned to be made, between the said *J. E.* of the one part; and *T. A.* and *J. K.* of the other part; the said *J. E.* for the considerations therein mentioned, did assign, transfer, and set over unto the said *T. A.* and *J. K.* their executors, administrators, and assigns, the said herein before mentioned indenture of lease and the premises thereby demised, to hold for the remainder of the said term of 89 years therein then to come, upon the several trusts therein and herein after mentioned, that is to say, upon trust to permit him the said *J. E.* to receive the rents and profits thereof

thereof for his life, and from and after his death, then upon trust to permit and suffer *M. E.* his wife to receive and take the rents, issues, and profits thereof, for the term of her natural life, and from and after the death of the survivor of them the said *J. E.* and *Mary* his wife, then upon trust to assign the said premises to such of the children of the said *J.* and *M. E.* as should be living at the death of the survivor of them, as in and by the said indenture duly executed by the said *J. E.* now in the custody or power of *J. T.* relation being thereunto had, may more fully appear. And your orator further sheweth unto your Lordship, that the said *J. E.* departed this life, some time on or about the 20th day of *November*, which was in the year of our Lord 1720, intestate, leaving the said *M.* his widow and only two children, to wit, *Elizabeth*, who intermarried with *W. B.* of, &c. and the said *Mary* your orator's said late wife, and no other issue then living; and that soon after the death of the said *J. E.* she said *Mary* his widow procured letters of administration of all and singular the goods, chattels, rights, credits, effects, and personal estate to be granted to her by and out of the proper ecclesiastical court. And the said *J. E.* being at the time of his death possessed of, interested in, or otherwise well and sufficiently entitled unto a very considerable personal estate, consisting (amongst other particulars) of and in several leasehold messuages or tenements, grounds, buildings, and other premises situate, lying, and being in the parish of — aforesaid, or elsewhere, in the county of *Middlesex* and city of *London*, or one of them, wherein were long terms of years to come at the death of the said *J. E.* annuities, ready money, money due upon mortgages, bonds, bills, and other specialties, and upon notes, and otherwise by simple contract, arrears of rent, stocks in divers

public and private funds and companies, plate, jewels, rings, watches, linen, household goods, and other goods, chattels, rights, credits, and effects, much more than sufficient to pay all his just debts and funeral expences, with a very great overplus, she the said *M. E.* by virtue of the aforesaid letters of administration, and by virtue of or under the aforesaid indenture of settlement, did shortly after the death of the said *J. E.* enter upon and possess herself of all the said intestate's leasehold messuages or tenements, and of all other his personal estate, consisting of the several particulars herein before specified or mentioned, and continued in the possession and receipt of the rents, issues, and profits thereof, until the time of her death, which happened at or about the time herein after mentioned; but never exhibited any inventory thereof into proper ecclesiastical court, or into the common serjeant's office of the city of *London*, as she ought to have done, he the said *J. E.* being a freeman of the city of *London*. And your orator further sheweth unto your Lordship, that the said *J. E.* dying intestate as aforesaid, the said *Mary* your orator's said wife, as one of his daughters and next of kin, thereupon became entitled to a distributive share of her said late father's personal estate, not included in the said indenture of settlement, either by virtue of the statute for distribution of intestate's personal estates, or according to the custom of the city of *London*. And your orator further sheweth unto your Lordship, that before any distribution had been made of any part of the said intestate *J. E.*'s personal estate, the said *M. E.* his widow and administratrix departed this life, to wit, on or about the 26th day of December, in the year of our Lord 1740, having, it is pretended, first duly made and published her will and testament in writing, bearing date on or about the 8th day of June, 1739. and thereby af-

ter reciting or taking notice, that she was possessed of the several messuages or tenements, with the appurtenances in — aforesaid, which she held by several leases thereof granted unto the said *J. E.* her late husband, deceased, wherein there was a long term then to come; and also of a piece of land fronting in the parish of which she held by lease from *J. H.* she thereby gave and bequeathed all her said messuages or tenements, with the appurtenances in aforesaid, and the said piece of land which she held from the said *J. H.* together with the several leases by which she held the same, unto her two friends Mr. *R. H.* and Mr. *D. C.* to hold to them, their executors, administrators, and assigns, during such terms as should be therein to come at the time of her decease, upon trust to permit and suffer her daughter *E. B.* to receive and take to her own separate use, one moiety of all the rents and profits thereof, during so long of the said terms as her said daughter should happen to live, she from time to time paying one half of the ground-rent and repairs of the said premises: and after the death of her said daughter *E. B.* then upon trust, that her said moiety of the said premises should go and be assigned to and amongst such child or children, as she should have living at the time of her decease, and for want of such issue, that then the same should go and be assigned to her other daughter *Mary* the late wife of your orator (then *M. F.*) and upon trust, that the said trustees should permit and suffer her other daughter the said *Mary*, your orator's said late wife, to receive and take to and for her own separate use, the other moiety of all the rents, issues and profits of the said premises, during so long of the respective terms therein, as she the said *Mary* your orator's said wife should live, she the said *Mary* paying one half of the ground-rent and repairs of the said

said premises, and after the decease of her said daughter *Mary*, then upon trust, that her said moiety of the said premises should go and be assigned to and amongst such child or children, as she should have living at the time of her decease; and for want of such issue, that then the same should go and be assigned to her sister the said *E. B.* and in case both the said testatrix's said daughters should die without issue, that then the whole thereof should go to such person or persons as the survivor of them her said two daughters should think fit to give or dispose thereof by her will; and in default thereof, then to the executors or administrators of such survivor; and gave all the residue of her personal estate to be equally divided between her said two daughters, *Elizabeth* and *Mary*, and of her said will, constituted and appointed the said *R. H.* and *D. C.* joint executors; and the said *M. E.* afterwards by a codicil to her said will, bearing date on or about the 16th day of November, 1739, did revoke the said bequest of the residue of her personal estate; and did by the said codicil give and devise all the residue of her estate whatsoever (after payment of her debts, funeral charges, and legacies) unto the said *R. H.* and *D. C.* upon trust, to pay, apply, and dispose of one half of such residue of her estate, to and for the separate use and benefit of her said daughter *E. B.* or to such person or persons as she should by any writing under her hand direct or appoint, and that the same should not be subject or liable to the intermeddling, debts, or engagements of her husband, or he to interfere therewith, and upon trust, to pay and apply the other moiety of the said residue of her estate unto her said daughter *Mary*, or to such persons and for such uses only as her said daughter *Mary* should by writing signed by her notwithstanding her co-venture appoint, and willed that the same should not

be subject to the debts, controul, or engagements of any husband she should thereafter marry, as in and by the said will and codicil, relation being to them respectively had, may more fully appear: and your orator further sheweth unto your Lordship, that the said *R. H.* and *D. C.* refusing to prove the said will, and having renounced the said executorship, letters of administration of all and singular the goods, chattels, effects, and personal estate of the said *M. E.* *with her said will and codicil therunto annexed*, were afterwards duly granted by and out of the prerogative court of the Archbishop of *Canterbury*, unto the said *Mary* your orator's said late wife, deceased, as daughter and next of kin of the said *M. E.* but before the said *Mary*, your orator's said wife had possessed herself of any part of the personal estate of the said *M. E.* deceased, by virtue of or under the aforesaid letters of administration, she the said *Mary* your orator's said late wife, departed this life intestate and without issue, to wit, on or about the 24th day of *November*, in the year of our Lord 1742, and shortly after her death, your orator procured letters of administration of her personal estate, to be granted to him, by and out of the prerogative court of the Archbishop of *Canterbury*, by virtue whereof, your orator is become entitled to all his said late wife's right, title, share and interest of, in, and to the personal estate of the said *J. E.* her said late father, deceased: and your orator hath likewise procured letters of administration of the goods, chattels, and personal estate of the said *J. E.* unadministered by the said *M. E.* to be granted unto your orator by and out of the said prerogative court of the Archbishop of *Canterbury*: and your orator further sheweth unto your Lordship, that on or about the 9th day of *January*, which was in the year of our

Lord

1743, he did make and seal the within bills.

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Lord 1742-3, the said *Elizabeth* the other daughter of the said *J. and M. E.* and wife of the said *W. B.* died intestate, leaving the said *W. B.* her husband and only one child, *viz. Elizabeth B.* an infant now living; and the said *W. B.* since the death of his said wife, hath procured letters of administration of the goods, chattels, rights, credits, and personal estate of the said *Mary E.* unadministered by the said *M. N.* your orator's said wife, to be granted to him by and under the seal of the prerogative court of the Archbishop of Canterbury, and by virtue or under colour thereof, hath entered upon, and possessed himself of, as well the said several leasehold messuages or tenements and premises at  aforesaid, which belonged to the said *J. E.* at the time of his death, and received the rents, issues, and profits thereof; and hath likewise possessed himself of all other the personal estate of the said *J. E.* which remained unapplied or unconverted at the time of the death of the said *Mary E.* and also of all and singular other the personal estate and effects, whereof the said *M. E.* died possessed of, interested in, or entitled unto, and which at the time of her death consisted of and in divers leasehold messuages or tenements, lands and premises, ready money, money due upon mortgages, judgments, bonds, bills, and other specialties, and upon notes, and other simple contract debts, stocks in divers publick and private funds and companies, plate, jewels, watches, rings, pictures, linen, household goods, and other goods, chattels, effects, and personal estate, to a very considerable amount or value; and much more than sufficient to answer and make good the distributive shares which ought to have been made by her, by and out of the personal estate of the said *J. E.* which came to her hands, unto her said two daughters, the said *Elizabeth* and *Mary*, and all

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## Bills and Answers.

other her just debts and funeral expences, with a very considerable overplus: and your orator well hoped, that the said *W. B.* would not only have permitted your orator to enter upon and receive and take to his own use and benefit one moiety or half part of the rents and profits of the said leasehold premises, comprised in the said indenture of the 31<sup>st</sup> day of *March* 1705, and to which your orator's said wife became entitled immediately upon the death of the said *M. E.* her mother, but would also have paid your orator one moiety of the rents and profits thereof, received by him since the death of the said *M. E.* and would likewise have accounted with your orator for his said late wife's distributive share of the several other leasehold messuages or tenements, which belonged to the said *J. E.* at the time of his death, and which were not comprised in, or included in the said indenture of the 31<sup>st</sup> day of *March*, 1705, and for the rents and profits thereof, received by the said *M. E.* in her life-time, or by him the said *W. B.* since her death, and also for all other the personal estate of the said *J. E.* come to the hands or possession of the said *Mary E.* his widow and administratrix, and would have paid and satisfied your orator, his share and proportion thereof, to which your orator is become entitled as administrator to his said wife, as in all justice and equity he ought to have done, your orator having divers times in a fair and friendly manner, both by himself and his friends or agents, and by letters otherwise applied to him for that purpose. *But now so it is,* may it please you Lordship, that the said *W. B.* combining and confederating to and with *Elizabeth B.* daughter and only child of the said *W. B.* by the said *Elizabeth* his wife, and with *J. C. F. G.* and *T. H.* the several tenants of the said leasehold messuages or tenements which belonged to the said *J. E.* and to and with divers

divers other persons at present to your orator unknown, whose names, when they shall be discovered, your orator prays may be inserted herein, and they made parties hereto, with apt matter and words to charge them, how to wrong and injure your orator in the premises, and to defeat your orator of his share and interest of and in the estate of the said *J. E.* and having prevailed on the said several tenants to attorn and pay their respective rents of the said intestate's said leasehold estates to him the said *W. B.* doth absolutely refuse to come to any manner of account with your orator for the said intestate's personal estate, or for the rents or profits of the said leasehold estates, or to pay your orator any part or share thereof, or to let your orator into possession of any part of the premises comprised in the said indenture of the 31st of March, 1705, sometimes pretending that the said *J. E.* never executed the said indenture, or any other deed or indenture, whereby he conveyed, limited, or disposed of any part of his leasehold estates, to, for, or upon such or the like uses, trusts, intents, or purposes, as are herein before mentioned, or in case he did, which the said confederates *W. B.* and *Elizabeth* his daughter, sometimes admit to be true, yet they then pretend that such deed or settlement was not valid or binding, as to the said *Mary* his widow, but that she, notwithstanding the said settlement, on his death, became entitled by virtue of the custom of the city of *London*, to one third part of his whole personal estate, and that only one third part thereof belonging to his said two daughters *Elizabeth* and *Mary*, equally between them; and that the other third part thereof was distributable equally amongst the said *Mary* the widow, and the said *Elizabeth* and *Mary*, the two daughters of the said *J. E.* Whereas your orator doth charge and humbly insist that the said settlement

was legal, valid, and binding on the said *Mary E.* and that she the said *Mary E.* was thereby excluded from any benefit under the custom of the city of *London*, and that upon the death of the said *J. E.* the said *Elizabeth* and *Mary*, his two daughters, became entitled, by virtue of the custom of the city of *London*, to one moiety or half part of all his leasehold and other personal estate, not included in the said settlement, and the other moiety thereof ought to have been divided and distributed to and amongst the said *Mary E.* the widow, and the said *Elizabeth* and *Mary* the two daughters of the said intestate *J. E.* and that upon the death of the said *Mary E.* your orator's said wife became entitled to one moiety or half part of all and singular the premises comprised in the said settlement, or deed of the 31<sup>st</sup> day of *March* 1705. But the said confederates do sometimes pretend and insist, that upon the death of the said *J. E.* she the said *Mary E.* became entitled to all his leasehold and other personal estate in her own right, and that she was not in any sort liable or accountable to her said daughters for any part or share thereof; but how, or by what means she became so entitled, they refuse to discover; and although at other times they admit that your orator's said wife was entitled to such share thereof as aforesaid, yet they then pretend that your orator or his said wife in her lifetime, received her share thereof, or full and ample satisfaction for the same, or that your orator or his said wife have possessed themselves of part of the personal estate of the said *J. E.* and *Mary E.* or one of them, of a greater amount or value than the share of your orator's said wife of and in his personal estate would amount unto; whereas your orator charges, and so the said confederates well know the truth to be, that your orator or his wife never did receive any part or share of the personal estate of

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the said *J. E.* or any satisfaction for the same; nor ever possessed themselves of any part of the personal estate of the said intestate *J. E.* or of the said *Mary* his widow, or either of them, save only of some very small and inconsiderable part thereof, which your orator hereby offers and submits to account for. And the said confederates do likewise pretend that the said *Mary E.* had full power to dispose of all and every part of the leasehold and other personal estate of her said late husband, who died intestate, in such manner as she hath taken upon herself to do, in and by her said pretended will, and insist that your orator ought not to seek any remedy or satisfaction for any share of his the said *J. E.*'s leasehold or other personal estates, in regard as they pretend, though very untruly, your orator hath submitted to the will of the said *Mary E.* and to accept the bequest thereby made in favour or for the benefit of your orator's said wife, in lieu or satisfaction of her share or interest in the said intestate's estate; whereas your orator doth charge and humbly insist that the said *Mary E.* had no power whatsoever, either by will or otherwise, to dispose of the share or interest of your orator's said wife, or in the estate of the said *J. E.* deceased, and that in case she did make such will, as is herein before mentioned, or any other will, whereby she took upon herself to dispose of the estate of the said *J. E.* yet that your orator never acquiesced under the said will, nor submitted thereto; and therefore the same ought not in any sort to affect or prejudice your orator's right, title, interest, or claim, in or to the said intestate *J. E.*'s estate; all which the said confederates do sometimes admit, and that your orator is entitled to such share or interest in the said *J. E.*'s estate, as is herein before for that purpose mentioned and set forth; but then they the said confederates, and in particular the said *W. B.* doth pretend,

pretend, that all the leasehold and other personal estate which the said *J. E.* died possessed of, interested in, or entitled unto, was but of a very small value, and not sufficient to pay all his just debts and funeral expences, or if the same was sufficient for that purpose, yet that there was but very little or no surplus remaining after payment thereof; and pretends that the said leasehold estates of the said *J. E.* were in mortgage at his death, for some considerable sum or sums of money; and that he the said *J. E.* was at his death indebted unto several persons his creditors in several considerable sums of money on judgments, bonds, bills, notes, or other securities, or otherwise, by simple contract: whereas your orator doth charge, that the said *J. E.* died possessed of, interest in, or entitled unto a very large personal estate, consisting of such leasehold houses and other particulars as aforesaid, all which afterwards came to the hands, custody, power, or possession of the said *Mary E.* his widow and administratrix, or of some other person or persons in trust for her; and that there was not any mortgage or mortgages on any part of his said leasehold estate, subsisting at the time of the death of the said *J. E.* and that the said *J. E.* died very little, if any thing, indebted to any person or persons whatsoever; and at other times the said *W. B.* doth admit that the said *J. E.* died possessed of such leasehold and other personal estate as aforesaid, and that the same afterwards came to the hands, custody, power or possession of the said *Mary E.* his widow and administratrix, and that the same was much more than sufficient to pay his debts and funeral expences; but then he pretends that the whole, or the greatest part thereof had been spent and consumed by the said *Mary E.* in her life-time, and that she the said *Mary E.* did not leave assets sufficient

ficient to answer and make good the personal estate of the said *J. E.* come to her hands, or in case she did leave assets sufficient for that purpose, yet that the same hath not yet come to his hands, custody, power, possession, or knowledge, or to the hands, custody, or possession of any other person or persons in trust for him, or by his order, or for his use; and likewise pretends that she the said *Mary E.* died greatly indebted unto several persons on mortgages, bonds, bills, and other specialties of a superior nature to your orator's demands, and more than her personal estate come to his hands will be sufficient to answer and pay. Whereas your orator charges the truth to be, that the said *Mary E.* died possessed of, interested in, or entitled unto a very considerable personal estate, and more than sufficient to answer and make good the personal estate of her said late husband come to her hands, and to pay and satisfy all other her just debts and funeral expences, all, or the greatest part whereof hath since come to the hands custody, or possession of the said *W. B.* and your orator doth further shew and charge, that your orator during the lifetime of the said *Mary E.* and by her order or direction, or by and with her privity and consent, did and performed divers repairs in and about the said leasehold messuages or tenements, which belonged to the said *J. E.* at his death, upon which account there became and still remains due to your orator the sum of      or thereabouts, for which the said *W. B.* absolutely refuses to pay your orator, or to make him any satisfaction for the same, although your orator hath frequently applied to him for that purpose, and the said *J. C.* &c. the tenants of the said intestate's said leasehold estate, persist in paying their rents for the said premises unto the said *W. B.* and refuse to pay any part thereof to your orator, although your orator hath frequently applied to them for that purpose; all which actings, doings, and pretences of the said

said confederates are contrary to all right, equity, and good conscience, and tend to the manifest wrong and injury of your orator. *In tender consideration whereof*, and forasmuch as your orator is utterly remediless in the premises in and by the strict rules of common law, your orator's witnesses who could prove the truth of all and singular the premises, being either dead, or gone, into parts remote beyond the seas, and to your orator unknown, so that your orator cannot have any benefit of their testimony at any trial to be had at common law, nor can have any relief in the premises, save in a court of equity before your Lordship, where matters of this nature are properly cognizable and relievable; to the end therefore, that the said confederates may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the premises, as fully and particularly as if the same were herein repeated, and they thereunto again interrogated; and more especially that they may set forth and discover, whether as they know, believe or have heard, the said J. E. did not execute such indenture as is herein before mentioned to bear date the 21st day of March 1705, of such purport or effect, or for such purposes as before mentioned, or of any other, and what date, purport, or effect; and whether he the said J. E. did not die intestate at or about the time herein before mentioned, or at any other time, and when, and what issue he had living at the time of his death; and whether he was not at the time of his death possessed of, interested in, and entitled unto such leasehold messuages or tenements, and other personal estate, consisting of such particulars as are herein before mentioned, or of any other, and what leasehold messuages or tenements, and other personal estate, and of what particulars the same consisted; and whether letters of administration of the said J. E.'s personal estate were not at any time, and

and when, granted by any and what ecclesiastical court, unto the said *Mary E.* his widow, or to any other person, and whom; and whether she the said *Mary E.* did not, by virtue of the said indenture of the 31st day of *March*, 1705, and of the said letters of administration, or how otherwise possess herself of the whole leasehold messuages or tenements, and other personal estate of the said *J. E.* or of any, and what part or parts thereof; and whether she, or any, and what other person or persons, for or on her behalf, did not continue in the possession and receipt of the rents and profits of the said leasehold premises and other personal estate of the said intestate *J. E.* until the time of her death; and whether any and what inventory or account of the said intestate's personal estate was at any time, and when, made or taken, and whether the same or any, and what inventory or account thereof was ever exhibited into any and what ecclesiastical court, or into the common serjeant's office of the city of *London*, and by whom, and when; and may set forth why such inventory or account was not so made, taken, or exhibited, as they know or believe; and may set forth what debts the said *J. E.* owed at his death, and to whom, and for what, and how, or in what manner secured; and whether the same or any and what part thereof hath been since paid or satisfied, and when, by whom, and to whom in particular; and whether, as they know or believe, the said *Mary* your orator's said late wife did not, upon the death of the said *J. E.* her father, become entitled to such distributive share of his personal estate, as is herein before mentioned in manner as aforesaid, or to any other, and what part or share thereof, and how or in what manner, and whether any distribution was at any time, and when, made of any and what part of the said intestate

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testate *J. E.*'s personal estate, and when, by whom, and to whom, and for what reason the same was not so done; and may also set forth when the said *Mary E.* died, and whether she did not make such will and codicil as herein before set forth, or any other, and what will or codicil, and whether letters of administration with the said will annexed, were not afterwards duly granted by the prerogative court of the Archbishop of *Canterbury*, unto the said *Mary* your orator's said late wife, and whether your orator's said wife did not depart this life, at or about the time herein before for that purpose mentioned, or at any other time, and when, and whether she did not die intestate, and without leaving any issue living at the time of her death, and whether your orator hath not procured letters of administration of her personal estate to be granted to him, by and out of the prerogative court of the Archbishop of *Canterbury*, or how otherwise, and whether by virtue thereof, or how otherwise, your orator is, or become entitled to his said late wife's share and interest of and in the personal estate of the said intestate *J. E.* and whether your orator hath not procured letters of administration of the goods and chattels of the said intestate *J. E.* unadministered by the said *Mary*, your orator's said late wife, to be granted unto your orator, by and out of the prerogative court of the Archbishop of *Canterbury*, or by and out of any and what other ecclesiastical court; and whether he the said *W. B.* did not intermarry with *Elizabeth*, one of the daughters of the said *J. E.*, and whether she the said *Elizabeth* did not depart this life, at or about the time herein before for that purpose mentioned, or at any other time, and when in particular, and whether she did not leave issue living at the time of her death, only one daughter, to wit, the said *Elizabeth B.* or any other, and what issue, and whether she the said *Elizabeth* the wife of the said *W. B.* did not die in-

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estate, or how otherwise, and who is or are her representative or representatives, and whether he the said *W. B.* hath not procured letters of administration of the goods, chattels, and personal estate of the said *Mary E.* unadministered by the said *Mary*, your orator's said late wife, to be granted to him, by and out of the prerogative court of the Arch-bishop of *Canterbury*, or by and out of any other and what ecclesiastical court; and whether by virtue thereof, or how otherwise, he hath not entered upon and possessed himself of the several leasehold messuages or tenements, which belonged to the said *J. E.* at the time of his death, and whether he hath not received the rents, issues, and profits thereof, and of all other personal estate of the said *Mary Edwards*, or of the greatest or any and what part thereof; and may set forth a particular account and rental of the several leasehold messuages or tenements, which belonged to the said *J. E.* at the time of his death, and who then was, or were, and ever since have, or hath been the tenant or tenants thereof, and at, or under what yearly or other rents, the same, or any part thereof, have or hath been at any time, and when, since the death of the said *J. E.* let, and to whom in particular, and what is the full and real value thereof in the whole, as they severally know or believe; and that the said *W. B.* may either admit assets of the said *Mary E.* come to his hands, sufficient to pay and satisfy your orator his share of the personal estate of the said *J. E.* which came to the hands of the said *Mary E.* or otherwise, that he may set forth a full, true, and just account of all and singular the goods, chattels, rights, credits, effects, and personal estate, which the said *Mary E.* died any way possessed of, interested in, or entitled unto, with the particular natures, kinds, quantities, qualities, true and real values thereof, and of each particular part or parts thereof,

which

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which have at any time come to the hands, custody, power, possession, or knowledge of the said *W. B.* or to the hands, custody, power, or possession of any other person or persons, and of whom by name, in trust for him, or by and with his direction, assent, consent, privity, or procurement; and how, by whom, to whom, when, and for how much money, the same and every part, parcel, and particular thereof hath been sold or disposed of, and whether for the true and real value thereof, or for as much as could be got for the same, or how otherwise, and what is become thereof, and of every part and parcel thereof; and what debts or sums of money were due or owing to the said *Mary E.* at her death, from any person or persons, and from whom by name, and upon what securities, or how otherwise, and how much he hath got in or received on account thereof, and from whom, and when, and may also set forth what debts the said *Mary E.* really owed at the time of her death, and to whom, and upon what security or securities, and when made, given, and executed, and for what consideration really paid, and by whom, and to whom, and when in particular, and how much she hath really paid on account thereof, and to whom, when, where, and in whose presence; and whether your orator hath not at any time or times, and when, and how often applied to the said *W. B.* to let your orator into possession of, and to permit him to receive and take, one moiety or half part of the rents and profits of the said leasehold premises, comprised in the said indenture of the 31st day of *March, 1705* and to pay your orator one moiety of the rents and profits thereof, received by the said *W. B.* and also to account with your orator for the personal estate of the said intestate *J. E.* and to pay your orator his share thereof; and whether he hath

not refused so to do, and for what reason; and whether your orator did not during the life-time of the said *Mary E.* do and perform, or cause to be done and performed, any and what repairs, on any, and what part of the leasehold estate, late of the said *J. E.* and whether, as they know or believe, there did not remain due to your orator for the same, at the time of the death of the said *Mary E.* such sum of money as is herein before mentioned, or any or what sum of money, and whether the same doth not still remain due and owing to your orator, and whether the said several tenants do not still continue to pay their respective rents unto the said *W. B.* or unto any other person, and whom, and whether they have not respectively refused to pay the same, or any part thereof, to your orator; and that your orator may be let into possession and have quiet enjoyment of one moiety of the leasehold premises, comprised in the said indenture of the 31st of *March*, 1705, and that the said *W. B.* may account with and pay your orator one moiety of the rents and profits thereof, accrued due and received by him since the death of the said *Mary E.* and that he may be compelled to come to a fair and just account with your orator for the personal estate of the said intestate *J. E.* which came to the hands, custody, power, or possession of the said *Mary E.* his widow and administratrix, or to the hands, custody, power, or possession of any other person or persons *in trust* for her, and may pay your orator his distributive share thereof; and that your orator may be paid the said sum of      for the repairs of the said premises, and that in the mean time, and until the said account be taken, a receiver may be appointed to receive the rents and profits of the leasehold estates of the said intestate *J. E.* and that your orator may have such further and other relief in all and singular the premises, as

shall be agreeable to equity and good conscience, and as to your Lordship shall seem meet. *May it please, &c.*

JOHN MADOCKS.

*To the Right Honourable Edward Lord Thurloe, &c.*

A bill for  
relief against  
a release ob-  
tained in  
consequence  
of a promise  
of marriage.

H U M B L Y complaining, sheweth unto your Lordship, your oratrix C. H. of, &c. spinster, that one W. E. of, &c. gentleman, did, for three or four years last past, make his addresses to your oratrix, by way of courtship in marriage, and the said W. E. having made several solemn assurances and promises of his sincerity and affection to and for your oratrix, so far prevailed upon your oratrix as to gain her consent to such marriage; and your oratrix sheweth, that she, relying upon the fidelity and honour of the said W. E. was also prevailed upon by him to advance, lend, and pay at several times during the said courtship, to him the said W. E. or to his use, divers sums of money to the amount of 1000*l.* and upwards; and also, during the time of the said courtship, your oratrix was prevailed upon by the said E. to supply and furnish him with, at and upon her own expence and credit, sundry sorts of goods, such as holland, cambrick, silk stockings, and divers other kinds, to the amount or value of 100*l.* and upwards; and the said W. E. still prosecuting his courtship, and continuing to make great professions of respect and kindness to your oratrix, requested your oratrix to give him a release and discharge for the sums of money and goods so advanced and delivered as aforesaid, insinuating at the same time, that as he the said W. E. and your oratrix was soon to become man and wife, it would be of little or no use or avail to her to have the aforesaid debt to your oratrix

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trix standing out against him; and your oratrix, putting an entire confidence in the sincerity and honour of the said *W. E.* and not doubting but he had a real intention to marry your oratrix, did, upon the motives aforesaid, comply with the said request, and actually did set her hand to some paper writing of the said *W. E.*'s drawing or procuring, importing as your oratrix believes (but what in particular your oratrix cannot exactly remember or set forth) some acquittance or discharge for the said several sums of money so advanced and delivered by your oratrix, though at the same time, as your oratrix expressly charges, there was not one farthing of money or other valuable consideration ever paid or offered to be paid by the said *W. E.* to your oratrix, upon the account of or for any of the matters aforesaid: and your oratrix further sheweth unto your Lordship, that some time after her signing the paper or writing above mentioned, your oratrix found to her great surprise, that the said *W. E.* declined to marry your oratrix, and that he never had any real intention so to do; whereupon your oratrix made frequent application by her agents and friends to him the said *W. E.* for repayment of the said several sums of money lent and advanced by your oratrix as aforesaid, as also for a satisfaction for the said goods. But now so it is, may it please your Lordship, that the said *W. E.* combining and confederating himself to and with divers persons unknown to your oratrix, whose names, when discovered, your oratrix prays may be inserted in this her bill, with apt words to charge them, how to defraud and defeat your oratrix of the said several sums of money and goods, doth absolutely refuse to make your oratrix any the least satisfaction for the same, and whenever the said *W. E.* hath been charged with the receipt of the said money and goods, he sometimes would deny

the same, and sometimes gave, and still doth give, doubtful and ambiguous answers thereto, on purpose to avoid any evidence being given against him, upon his confession or admission; and this being a transaction in secret between your oratrix and the said *W. E.* and no other person or persons privy either to the loan of the said money or delivery of the goods, he doth upon that account put your oratrix to defiance touching the premises; and sometimes the said *W. E.* pretends and insists, that in case the said money and goods were really and *bona fide* advanced, paid, and delivered as herein before set forth, yet your oratrix hath now no pretence or foundation to make any demands upon him in respect either of the said goods or money, for that, as he insists, your oratrix hath given him an absolute release and discharge for the same; and that such release will be a bar to any right or demands your oratrix can set up upon that account; and at other times the said *W. E.* pretends he never made courtship to your oratrix as aforesaid, or ever intended to marry your oratrix, or ever made any promises or assurances so to do. Whereas your oratrix doth charge, as the truth really is, that the said *W. E.* did make such courtship and promises of marriage to your oratrix as herein before are mentioned, and that the same was so done only to get what money, goods, and effects from your oratrix he could defraud your oratrix of, under such specious colours and pretences. And your oratrix also charges that the said promises of marriage made by the said *W. E.* to your oratrix, were the only motive and inducement to your oratrix to lend and supply him the said *W. E.* with the said money and goods which she did actually advance and deliver to him, as also to her signing and giving such release or receipt as the said *W. E.* insists upon; and therefore your oratrix humbly hopes and

and is advised, if any such release there be, the same in a court of equity shall be no bar to your oratrix's said demands, but be deemed and taken to be fraudulent and void in itself: All which actings, pretences and doings of him the said *W. E.* and other the confederates tend to the manifest wrong and injury of your oratrix. In tender consideration whereof, and for that your oratrix is utterly remediless in the premises at the common law, and the same being a transaction only between your oratrix and the said *W. E.* and no person or persons privy to the same, so as to be able to bear testimony thereof, your oratrix can have relief only in this court by a discovery of the truth of the said premises, upon the oath of him the said *W. E.* and for that matters of fraud are properly cognizable and examinable before your Lordship. To the end therefore, the said *W. E.* and other the confederates when discovered, may true, full, and perfect answer make to all and singular the premises, as if the same were herein again more fully interrogated and repeated, and more especially that the said *W. E.* may distinctly answer hereto, not only to his knowledge, but to the best of his belief, and may set forth, whether he did not make such or any, and what other addresses and courtship to your oratrix as aforesaid, or pretended so to do, and made any and what promises or assurances to marry your oratrix, or whether he did not endeavour to make your oratrix so to believe, and whether during the said courtship, or at any other time or times, and when, your oratrix did not supply and advance, lend, or pay to him the said *W. E.* several and what sum or sums of money at several and what time or times in particular, as he knows or believes, to the amount of 1000*l.* and upwards, or to what other value, or whether your oratrix did not deliver or cause to be

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delivered the goods herein before mentioned, or what other, and to what value, to him the said *W. E.* and who paid for or is answerable for such goods, and what was the true or real motive or inducement of your oratrix's advancing or delivering the said money or goods, and whether your oratrix hath given any, and what release, acquittance, or discharge for the said money or goods, and when, and before whom, and by what arts, persuasions, and insinuations, your oratrix was prevailed upon to lend and procure such money and goods, or to give such release and discharge for the same, and whether at the time of giving such pretended release, or at any other time, and when he paid any, and what sum of money, or made your oratrix any, and what satisfaction in respect of the said money or goods, or ever paid any valuable consideration for the same, and why he refuses so to do, and whether he insists upon such release and discharge, and may set forth the same in *beat verba*, and who drew or procured the same, and are witnesses thereto, and whether any person or persons, and who by name, was or were privy to the loan of the said money, or delivery of the said goods, or to any part thereof, or to your oratrix's giving or signing such pretended discharge or release as aforesaid, and whether your oratrix was made acquainted with the true meaning and import of the same; and that the said *W. E.* may be compelled by a decree of this honourable court to account to your oratrix, and make her satisfaction for the said money and goods, together with interest respectively for the same, from the time the same were advanced and delivered aforesaid, and that the said discharge or release (if any such there be) may be set aside and delivered up by the said *W. E.* to your oratrix to be cancelled, and that your oratrix may have such further relief

relise in the premises, as to your Lordship may seem meet and proper, according to equity and good conscience. May it please your Lordship, to grant to your oratrix his Majesty's most gracious writ or writs of subpœna, to be directed to the said *W. E.* thereby commanding him at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there to answer all and singular the premises, and further to stand to and abide such further order and decree, as to your Lordship shall seem meet. And your oratrix shall ever pray, &c.

JOHN MADOCKS.

*An information by the attorney general, at the relation of the rector and churchwardens for money given to charitable uses.*

*To the Right Honourable, &c.*

Informing sheweth unto your Lordship, *J. W.* Esq; his Majesty's attorney general, at and by the relation of *G. W.* clerk, rector of the parish of *R.* in the county of *S.* and of *W. P.* and *G. E.* churchwardens of the same parish, on behalf of themselves and the rest of the parishioners and inhabitants of the same parish, That *H. F.* late of *W.* in the said county of *S.* bart. deceased, in his life-time, and at the time of his death, was seised in fee simple of and in divers manors, messuages, farms, lands, tenements and hereditaments, situate and being within the county of *K.* and the several counties of *K. E.* and *S.* or some of them, or elsewhere within that part of Great Britain called England, and the said Sir *H. F.* was also possessed of, interested in, or intituled to a very considerable per-

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sonal estate, and being minded to dispose of great part of his estate for several charitable purposes, he the said Sir H. F. did some time before his death duly make and publish his last will and testament in writing, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_, and did thereby nominate and appoint Sir W. T. Bart. C. S. A. Esq; the reverend Mr. A. D. T. G. and C. W. of \_\_\_\_\_ Esq; his executors, in trust for the performance of his said will, and thereby gave and devised all, &c. [Here recite the devises in the will] as by the said will, could his Majesty's attorney general or the said relators produce the same, might more fully appear. And his Majesty's said attorney general by the relation aforesaid further sheweth, that the said will of the said Sir H. F. was duly signed, sealed, published and declared by the said testator as and for his last will and testament, in the presence of, and attested by, three credible witnesses; and the said testator, at the time of the date and execution of the said will, was of sound and perfect memory and understanding; and he the said testator on or about the \_\_\_\_\_ day of \_\_\_\_\_ now past departed this life without issue, and without altering or revoking his said will, and was at the time of his death possessed of, interested in, or intitled to a very great and considerable real and personal estate, which personal estate amounted to the value of \_\_\_\_\_ and upwards, and was sufficient to pay and satisfy all his debts and legacies, and funeral expences, with a great overplus. And his majesty's said Attorney General by the relation aforesaid further sheweth, that soon after the said testator's death the said executors and trustees proved the said will in the prerogative court of Canterbury, and have taken upon themselves the burthen and execution thereof, and have possessed themselves of all or the greatest part of the goods, chattels, and personal

personal estate of their said testator, and ought to exhibit a true and perfect inventory and particular thereof, and also an account in what manner they have paid, administered, disposed of or applied the same, and to whom, and in payment of what debts and legacies; and they the said trustees and executors ought also with all convenient speed to build, erect and endow the said church or chapel and charity school, according to the direction of the said will, and in all other things to perform and execute the pious and charitable intentions and directions of the said testator, according to the true intent and meaning of his said will. But now so it is, may it please your Lordship, that the said executors and trustees Sir *W. T. C. S. A. T. J. and C. W.* combining and confederating with *F. J. and M.* and also with *G. T. the younger, and H. T. of J.* in the county of ——, *G. T. of, &c. and R. T. of, &c. and S. K. of, &c.* who are the cousins and heirs at law of the said testator Sir *H. F.* the said *G. T. the younger, and H. T.* being the only sons and heirs in gavelkind of *H. T. Esq;* deceased, who was the eldest son and one of the coheirs in gavelkind, and the said *G. T. and R. T.* being the youngest sons and the other coheirs in gavelkind of *E. T.* deceased, late wife of *H. T. of J.* aforesaid, *Esq;* and the surviving daughter of *E. L.* also deceased, late wife of *W. L. Esq;* deceased, only sister and heir of *A. L.* son and heir of the said *E. L.* which said *E. L.* was one of the two sisters of *W. F.* the elder, late of *W.* aforesaid, deceased, late father of the said Sir *H. F.* and the said *S. K.* the only surviving daughter and heir of *M. S.* late wife of *K. S.* late of *E. G.* in the parish of *S.* in the county of *K. Gent.* deceased, which said *E. S.* was the other sister of the said *W. F.* the elder; and the said *J. B.* only daughter and heir of *M. B.* deceased, late wife of *C. B. Esq;* who was the only daughter

daughter and heir of *W. F.* the younger, deceased, who was the eldest son of the said *W. F.* the elder by —— his first wife, and brother of the half blood of the said testator, together with divers other persons unknown to his Majesty's said Attorney General or the said relators, whose names, when discovered, his Majesty's said Attorney General prays may be inserted in this information, and they made parties to the same with apt words to charge them; they the said executors pretend and give out in speeches sometimes, that the said testator did not leave assets sufficient to pay all his just debts, legacies and funeral expences, and also to make good the said several charities and charitable donations given and directed in and by his said will; whereas his Majesty's Attorney General charges, that the said testator died possessed of a very considerable personal estate, which, if rightly applied, and duly improved, will be much more than sufficient to satisfy all the testator's debts, legacies and funeral expences; and particularly his Majesty's Attorney General charges, that the said executors, or some of them, were indebted upon bond or otherwise to the said testator at his death in very great sums of money, which ought to be paid in and applied towards payment of the said testator's debts and legacies; but they refuse or neglect to pay in the said debts, and such of them as are so indebted sometimes give out, that their debts are extinguished by the said testator having made them executors of his will, and that they are not now liable to the payment thereof; whereas they well know, and so his Majesty's Attorney General and the said relators insist, that the said executors are only appointed executors in trust for the performance of the testator's will, and that it never was the testator's intention, by making them executors, to extinguish any debt or debts which any of them might owe him at the time

time of his death, and that he or they should retain the same to their own uses, nor is there any colour for them to set up any such pretence; and as to the pretence, that the said testator's personal estate is not sufficient to satisfy all his debts, legacies and funeral expences, his Majesty's Attorney General and the said relators do also insist, that in case there shall appear to be any such deficiency of the said testator's personal estate, the same ought to be made good out of his real estate, he having by his said will expressly devised all manors, lands and real estate whatsoever, to his said executors and trustees, and their heirs, to the uses and upon the trusts mentioned in his said will, and thereby, as his Majesty's Attorney General and the relators insist, he has subjected all his said real estate to the payment of his said legacies, and particularly of the said charities; but then it is pretended by the said G. T. the younger, and H. T. the grandsons, G. T. R. T. and S. K. the heirs at law, that the said testator's real estate is descended upon them, and that the said will was not duly executed, as by law it ought to be, for the devising of lands and tenements, or at least that it will be incumbent upon his Majesty's Attorney General, and the said relators, to make due proof of the execution thereof; at other times it is pretended by the said executors, that the said testator having by his said will directed, that his trustees should not apply any money arising from his estates given to his said charities in the said parish of R. either to a minister, school-master, or poor children, until seven years were expired after his decease, his Majesty's Attorney General and the said relators, ought not to make any demands upon them the executors until after the expiration of the said seven years; whereas the said executors well know, that the said testator has declared his will to be, that his trustees might at any time

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time after his decease erect and build the said church or chapel, and school-house, or either of them; and therefore they the said executors ought, as soon as may be, to purchase a proper piece of ground, whereon to erect the said church or chapel, and to set about the building the same with all convenient speed; and they ought to come to an account for the said testator's personal estate, and a sufficient part thereof ought to be appropriated and set apart for answering and making good the said testator's other charities, when the said seven years shall be expired, and so the said executors sometimes admit; but then they pretend they are unwilling to act in any matter relating to the said charities without the direction and indemnity of the decree of this honourable court; and the said F. J. and M. his wife, do also insist, that in regard the said testator having by his said will directed, that his executors and trustees shall maintain and keep up his gardens belonging to his said capital messuage at S. they the said executors ought out of the said testator's personal estate to pay and expend what the said F. J. and his wife shall think fit to lay out and expend from time to time in and about the said gardens and paddock; whereas the said testator has only directed, that 20*l.* a year shall be paid to the said J. C. the testator's gardener, for looking after the said garden and paddock, and no greater sum ought to be paid by the said trustees for keeping up the said gardens, than the said 20*l.* a year, and such yearly sum, his Majesty's Attorney General and the relators insist ought to be paid out of that part of the said testator's real estate, which is devised to the said M. J. but the said F. J. and his wife insist, that the charges of keeping up the said gardens shall be paid out of the said testator's personal estate, and not out of any part of his real estate devised to her, to the great prejudice and diminution of the said charities.

charities. In consideration whereof, and forasmuch as charitable bequests and donations can only be effectually established and specifically carried into execution by the aid and assistance of a court of equity: To the end therefore, that the said confederates may, upon their respective corporal oaths, true and perfect answer make to all and singular the premisses, as fully and distinctly as if the same were here again particularly repeated and interrogated, and especially may set forth and discover, as they respectively know or believe, whether the said Sir H. F. did not make his last will and testament in writing, and thereby make such devises or to such effect as are herein before set forth; and whether the said will was not duly executed by the said Sir H. F. in the presence of, and attested by, three credible witnesses, and who by name; and may set forth the same in the very words thereof; and whether the said Sir H. F. did not die without issue, and when he died; and that the said defendants, the trustees and executors, may set forth a particular of all the manors, messuages, lands, tenements, and hereditaments, which the said testator was any ways intitled to at the time of his death; and what estate or interest he had therein, and the yearly values thereof, and where the same are respectively situate, lying and being; and whether they have not proved the said testator's will, and taken upon themselves the burthen and execution thereof; and that they may set forth a true inventory and particular of all the goods, chattels and personal estate not specifically devised, whereof the said testator was possessed, interested in, or intitled unto at the time of his death, and the true values thereof, and what part thereof hath come to the possession of them the said executors or either of them, or of any other person or persons for their or either of their use; and how.

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ti me after his decease erect and build the said church or chapel, and school-house, or either of them; and therefore they the said executors ought, as soon as may be, to purchase a proper piece of ground, whereon to erect the said church or chapel, and to set about the building the same with all convenient speed; and they ought to come to an account for the said testator's personal estate, and a sufficient part thereof ought to be appropriated and set apart for answering and making good the said testator's other charities, when the said seven years shall be expired, and so the said executors sometimes admit; but then they pretend they are unwilling to act in any matter relating to the said charities without the direction and indemnity of the decree of this honourable court; and the said F. J. and M. his wife, do also insist, that in regard the said testator having by his said will directed, that his executors and trustees shall maintain and keep up his gardens belonging to his said capital messuage at S. they the said executors ought out of the said testator's personal estate to pay and expend what the said F. J. and his wife shall think fit to lay out and expend from time to time in and about the said gardens and paddock; whereas the said testator has only directed, that 20*l.* a year shall be paid to the said J. C. the testator's gardener, for looking after the said garden and paddock, and no greater sum ought to be paid by the said trustees for keeping up the said gardens, than the said 20*l.* a year, and such yearly sum, his Majesty's Attorney General and the relators insist ought to be paid out of that part of the said testator's real estate, which is devised to the said M. J. but the said F. J. and his wife insist, that the charges of keeping up the said gardens shall be paid out of the said testator's personal estate, and not out of any part of his real estate devised to her, to the great prejudice and diminution of the said charities.

charities. In consideration whereof, and forasmuch as charitable bequests and donations can only be effectually established and specifically carried into execution by the aid and assistance of a court of equity: To the end therefore, that the said confederates may, upon their respective corporal oaths, true and perfect, answer make to all and singular the premisses, as fully and distinctly as if the same were here again particularly repeated and interrogated, and especially may set forth and discover, as they respectively know or believe, whether the said Sir H. F. did not make his last will and testament in writing, and thereby make such devises or to such effect as are herein before set forth; and whether the said will was not duly executed by the said Sir H. F. in the presence of, and attested by, three credible witnesses, and who by name; and may set forth the same in the very words thereof; and whether the said Sir H. F. did not die without issue, and when he died; and that the said defendants, the trustees and executors, may set forth a particular of all the manors, messuages, lands, tenements, and hereditaments, which the said testator was any ways intitled to at the time of his death; and what estate or interest he had therein, and the yearly values thereof, and where the same are respectively situate, lying and being; and whether they have not proved the said testator's will, and taken upon themselves the burthen and execution thereof; and that they may set forth a true inventory and particular of all the goods, chattels and personal estate not specifically devised, whereof the said testator was possessed, interested in, or intitled unto at the time of his death, and the true values thereof, and what part thereof hath come to the possession of them the said executors or either of them, or of any other person or persons for their or either of their use; and how.

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how and in what manner, and in payment of what debts or legacies, and to whom, the same or any, and what part or parts thereof, or the monies arising by the sale of any part thereof, hath been paid, applied, disposed of or administered; and whether the same is not sufficient fully to discharge and satisfy all his just debts and legacies, and funeral expences, and also the said charitable bequests and donations in the said will; and that they may also set forth, whether they or some, and which of them, were not indebted to the testator at the time of his death; in any and what sums of money, and how the same were secured; and that the said F. J. and M. his wife may set forth the yearly value of the said messuages, lands and tenements devised to her the said M. by the said testator's will, and that the said executors may come on an account for the said testator's personal estate, and may thereout pay the said legacy of 50l. bequeathed to the said parish of R. to the church-wardens and overseers of the poor of the same parish for the purposes in the said will mentioned concerning the same; and that the said executors may also lay out and apply the sum of 1500l. in the erecting and building a chapel or church and a charity-schoob in or near C. and A. aforesaid, according to the said testator's will, and in purchasing a proper piece of ground whereon to build the same; and may also invest and lay out the several sums of 4000l. 500l. and 3000l. in the purchase of lands of inheritance, according to the testator's will, for the several purposes therein mentioned; and that in the mean time the said several sums, and all the rest of the said testator's personal estate not specifically devised, over and above what shall be sufficient to pay and satisfy all the testator's debts, legacies and funeral expences, may be placed out upon good securities at interest, for the augmentation of the said charities, and that the witnesses

witnesses to the said will may be examined, and their testimony perpetuated; and that the said several charities and charitable donations may be settled and established, and all the trusts in the said testator's will be fully performed and carried into execution, according to the true intent and meaning of the said will; and that such further and other relief may be had and obtained in the premises, as to your Lordship shall seem agreeable to equity and good conscience; May it please your Lordship, &c.

*Another information by the Attorney General for money given to charitable uses.*

*To the Right Honourable, &c.*

Informing sheweth unto your Lordship, Sir Information filed, &c.  
Knight, his Majesty's Attorney General, at and by the relation of F. W. clerk, vicar of the parish of —— in the county of ——, and J. B. and J. C. churchwardens of the same parish, for and on the behalf of, &c. (as in the last information ) That W. B. late of —— in the said county of —— Esq; deceased, being in his life-time possessed of a considerable personal estate, did on or about the —— day of ——, which was in the year of our Lord 17 —, duly make and publish his last will and testament in writing, and thereby (among other things) gave and bequeathed the sum of 500<sup>l</sup>. to be raised out of his personal estate, and directed that the same sum (when raised) should be paid unto T. W. of, &c. and J. B. of, &c. their executors and administrators, on trust to be by them the said T. W. and J. B. their executors or administrators (with all convenient speed) laid out part in building of a small school house in the village of —— in the parish

fish aforesaid, together with a little house adjoining thereto, for a schoolmaster to live in, and directed that the purchase of the said ground and building should not exceed the sum of 200*l.* and that the remaining 300*l.* should be laid out in the purchase of land or some real security, to be a maintenance and provision for the master of the said intended school, and the building of the said school and school-house for the master, and also the placing out of the said 300*l.* for the maintenance of the said master as aforesaid, was to be done by the advice and assistance of the proprietor of *L.* and the vicar and churchwardens of the said parish of — for the time being, or any two of them, the proprietor of *L.* or the vicar of the said parish of — to be one; in which school the said testator directed, that so many boys of poor farmers, labourers and craftsmen, of the said village and parish of — aforesaid, should be taught to read and write, and to continue so long at or in the said school, as the said proprietor of *L.* the vicar and churchwardens of the said parish of — of any two of them for the time being, should under their hands direct or appoint; And the said testator also directed, that the said school master should be chosen by the majority of the vestry of the said parish, the said master having been first examined and approved of, by the vicar of the said parish of — for the time being, as a proper person to be chosen master of the said school, and that upon any misdemeanor of the master of the said school, the vestry of the said parish of — should be called (the vicar and the churchwardens of the same parish for the time being, or any two of them to be present) to examine into the same; and in case the master of the said school should be found guilty of any misdemeanor relating to the said school, then the majority of the vestry of the said parish of — (the proprietor of *L.* and the vicar and churchwardens)

wardens of the same parish of —— for the time being, or any two of them being present) should proceed to remove and displace the said master from the said school, and should proceed to elect and nominate (in the manner aforesaid) another master to succeed him so removed and displaced; And his Majesty's Attorney General, by the relation aforesaid, further sheweth unto your Lordship, that the said testator did in and by his said will give to the poor of —— the sum of 100*l.* to be raised out of his personal estate, and to the poor of the parish of —— the sum of 100*l.* to be also raised out of his personal estate, whereof 100*l.* was to be paid by S. B. (the said testator's executrix, and a defendant herein after named) to the churchwardens for the time being, of the respective parishes of —— and —— to be by them the same churchwardens (by and with the consent of the minister and vicar of each parish for the time being) placed out at interest; and the said testator did by his said will direct, that the minister and vicar, and churchwardens of the said respective parishes of —— and —— or any two of them (the minister and vicar of each parish to be one) should distribute yearly, two days before *Christmas day*, the produce and interest that should arise from the said 100*l.* among ten of such indigent and labouring families of each of the said parishes of —— and —— as they shall judge to be most wanting of it; and of his said will the said testator appointed his wife E. B. executrix; And his Majesty's Attorney General, &c. sheweth unto your Lordship, that the said W. B. by a codicil to his said will, bearing date the — day of —— 17<sup>th</sup>, appointed L. R. of, &c. a trustee for the purposes in his said will mentioned together with S. W. and J. B. the other trustees in the said will named, as by the said will and codicil, could his

Majesty's Attorney General or the relators produce the same, might more fully appear; And his Majesty's Attorney General, &c. further sheweth unto your Lordship, that the said *W. B.* at the time of the date and execution of the said will, was of sound mind, memory and understanding, and that the said *W. B.* some time after making his will and codicil as aforesaid (*viz.*) on or about the day of — in the year of our Lord 17— departed this life without revoking or altering his said will (save only as to the nomination of the said *E. R.* to be a trustee as aforesaid) and that upon the death of the said testator, the said *E. B.* proved the same in, &c. and took upon her the burthen of the execution thereof; And his Majesty's Attorney General at, &c. further sheweth unto your Lordship, that the said *W. B.* at the time of his death was possessed of, and intitled unto a considerable personal estate, consisting of leasehold messuages, &c. to the amount of £. or to some other considerable amount sufficient to pay and satisfy all his just debts, legacies, and funeral expences with a great overplus; And his Majesty's Attorney General at, &c. further sheweth unto your Lordship, that the said *E. B.* after the death of the said *W. B.* not only got into her hands, custody or power, all or the greatest part of his personal estate, sufficient to pay all his debts, legacies, and funeral expences, with a considerable overplus, but also entred upon his freehold estate called *L.* and is the proprietor thereof for the time being, and the said *F. W.* &c. (all the relators) have oftentimes in a friendly manner applied to the said *E. B.* to pay to the said *L. R.* &c. (the trustees) the said 500l. to be by them applied to the purposes mentioned in the said will of the said *W. B.* and to assist them in carrying the charitable purposes of the said testator into execution; And his Majesty's Attorney General at, &c. further sheweth unto your Lordship, that

that the said F. W. &c. (the relators) have often times applied to the said E. B. to pay to them the said 100l. so directed by the said testator's will to be paid to them as aforesaid; in order to apply the same according to the said testator's will, but the said E. B. always refused and still refuses so to do, and the said L. R. &c. (the trustees) refuse to act in the said trust reposed in them in and by the said will, altho' often applied to by the said F. W. &c. (the relators) for that purpose; But now so it is, may it please your Lordship, that the said E. B. &c. combining and confederating to and with divers persons, to his Majesty's said Attorney General or the said relators unknown, whose names, when discovered, his Majesty's said Attorney General prays may be inserted in this information with apt words to charge them, the said E. B. &c. now pretend and give out that, &c. [Here go on with the charge] All which actings, doings and pretences of the said E. B. &c. and their confederates, are contrary to all right, equity and good conscience, and tend to the great prejudice and diminution of the said charities: In consideration whereof, and for as much as charitable bequests and donations can only be effectually established, and specifically carried into execution, by the aid and assistance of a court of equity; To the end therefore, that the said E. B. &c. (and their confederates) as discovered, may upon their several corporal oaths true and perfect answer make to all and singular the premisses, as if the same were here again repeated and interrogated, and more especially, that the said E. B. &c. may set forth and discover (as they respectively know or believe) whether the said testator did not make such will and codicil in writing of such dates as aforesaid, and thereby make such devises or to such effect as are herein before set forth, and whether the said W. B. did not depart this life without revoking his said

will and codicil, and whether the said *W. B.* did not appoint the said *E. B.* sole executrix of the said will, and whether she hath not proved the same, and in what court, and if she did not possess herself of the said testator's personal estate, and whether the same was not more than sufficient to pay all the testator's just debts, legacies and funeral expences, and whether she is not proprietor or owner of *L.* and that the said *E. B.* may admit assets sufficient to pay the said charitable legacies, and that the said trusts in the said will relating to the said charities may be carried into execution, under the directions of this honourable court, and that the said *L. R. &c.* (the trustees) may act in, or assign their trust, and that the said *E. B.* may pay to them, or to such persons as this honourable court shall direct, the said 500*l.* and interest for the same from the time she last paid the same, to be applied to the charitable purposes mentioned in the will of the said *W. B.* and also may pay to the said *J. B.* and *J. C.* the present churchwardens of the said parish of —— the said 100*l.* and interest for the same from the time she last paid the same, to be applied to the said charitable purposes mentioned in the said *W. B.*'s said will, and that such further and other relief may be had and obtained in the premisses, as to your Lordship shall seem agreeable to equity and good conscience; May it please, &c.

The answer of the executrix to the last information, wherein she insisted upon the Stat. of the 9 Geo. 2. intituled an act to restrain the dispositions of lands, whereby the same became unalienable.

The answer of E. B. widow, one of the defendants, to the information exhibited by or in the name of \_\_\_\_\_ his Majesty's attorney General, by and at the relation of F. W. clerk, vicar, &c. and J. B. and J. C. churchwardens of, &c.

THIS defendant, saving and reserving to herself, now and at all times hereafter, all and all manner of benefit and advantage of exception to the insufficiencies, uncertainties and other imperfections and defects of the said information for answer thereto, or unto so much thereof as this defendant is advised is any ways material or necessary for her this defendant to make answer unto, she this defendant answereth and saith, That she believes and admits it to be true that the said relator F. W. is vicar of the parish church of \_\_\_\_\_ in the county of \_\_\_\_\_, and that the said relators J. B. and J. C. are churchwardens of the said parish of \_\_\_\_\_ in the said information mentioned; and this defendant believes and admits it to be true that W. B. late of \_\_\_\_\_ deceased in the said information named, was in his life-time and at the time of his death possessed of a considerable personal estate, and being so possessed he did on or about the \_\_\_\_\_ day of \_\_\_\_\_ which was in the year of our Lord 17 make and duly publish his last will and testament in writing of that date, and did therein and thereby (amongst other things) give and bequeath the sum of 500/. to be

raised by and out of his personal estate, unto T. W. and J. B. of, &c. two other defendants in the said information named, their executors and administrators, Upon trust that they should lay out part thereof in building a small school-house in — with an house adjoining for a school-master to live therein, and did thereby direct that the purchase of the ground and expence of building should not exceed the sum of 200*l.* and the remaining 300*l.* he the said W. B. did thereby will and direct should be laid out in the purchase of land or some real security, to be a maintenance and provision for the master of the said school; all which the said testator did by his said will appoint to be done by the advice and assent of the proprietor of L. and the vicar of the said church of — and the two churchwardens of the said parish of — for the time being, or any two of them, whereof the proprietor of L. aforesaid, or the said vicar for the time being, to be one; in which school the said testator did direct such boys to be taught in such manner, as therein and in the said information particularly mentioned, and the said testator did likewise by his said will give such directions concerning the choice and removal of the said master of the said school, as therein and in the said information particularly mentioned, and the said W. B. did by his said will give to the poor of the said parish of — to be also raised out of his personal estate the sum of 100*l.* to be paid by his executrix to the churchwardens of the said parish, who (with the consent and approbation of the vicar of the said parish) he thereby directed should place the same out at interest for such purposes, as therein and in the said information particularly mentioned, and of his said will the said testator did appoint this defendant his widow and relict sole executrix; and the said W. B. did by a codicil to his said will by him duly made and published, and bearing date the — day of — which

which was in the year of our Lord 17 — appoint *L. R.* of, &c. (another defendant in the said information named) a trustee for the purposes in the said will mentioned, together with the other trustees therein named; and this defendant saith, that the said *W. B.* did depart this life on or about the time in the said information for that purpose mentioned, without revoking or altering his said last will and testament any further or otherwise than by the said codicil as aforesaid; and this defendant admits it to be true, that soon after the death of the said testator (that is to say) on or about the — day of —— 17 this defendant did prove the said will and codicil of the laid testator in the prerogative court of the Archbishop of *Canterbury*, being as this defendant apprehends and believes the proper ecclesiastical court, as by such will and codicil or the probate thereof, to which when produced this defendant craves leave to refer, may more fully appear; And this defendant admits that she has taken upon her the burthen of the execution of the said will and codicil, and this defendant further saith, that she admits it to be true, that the said *W. B.* was in his life-time and at the time of his death possessed of, or intitled to a considerable personal estate fully sufficient to pay and satisfy all the just debts and funeral expences of the said testator, and also all the legacies given and bequeathed by his said will; and this defendant further saith that she admits it to be true, that she did soon after the death of the said testator get into her hands, custody or power, so much of the said personal estate as was fully sufficient to pay all the just debts and funeral expences of the said testator, and also all the legacies given by his said will; and this defendant also admits it to be true, that she did, upon the death of her said husband, enter upon the freehold estate of her said late husband, called *L.* and did become, and now is, the

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proprietor thereof for her life, according to the said testator's will; and this defendant admits it to be true, that all the said relators have applied to her to pay the said other defendants *L. R. T. W.* and *J. B.* the said sum of 500*l.* in trust to be applied in and to the purposes mentioned and declared in and by the said testator's said will in respect thereof, and also to assist them in carrying into execution the purposes aforesaid, according to the directions of the said will in relation to the said 500*l.* But this defendant humbly submits it to the judgment of this honourable court, whether by virtue of the statute, made in the 9th year of the reign of his present Majesty, intituled, an Act to restrain the dispositions of lands, whereby the same became unalienable, the devise of the said 500*l.* so to be laid out in such purchase and in such manner as in the said will mentioned, is not void; and this defendant therefore humbly submits it to the judgment of this honourable court, whether the said 500*l.* or any part thereof, ought, according to law, to be raised or paid or applied for such purposes as aforesaid, or any of them; and this defendant humbly insists upon the said statute, and humbly hopes, that she shall have the benefit thereof in as full and ample manner, to all intents and purposes, as if she had pleaded the same to so much of the said information, as seeks to have the said 500*l.* raised and paid as aforesaid; and this defendant further saith, that she denies that the said relators *J. B.* and *J. C.* the present church-wardens of the said parish of \_\_\_\_\_ or either of them, have or hath ever in any manner, save by the said information, applied to this defendant to pay to them the said sum of 100*l.* in trust to be by them applied in or to the charitable purposes mentioned or declared in or by the said testator's said will in respect thereof, or to any such effect; nor did this defendant ever refuse to pay the said relators, or either of them, the said

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said sum of 100*l.* to be by them respectively applied in and to the several charitable purposes by the said will declared concerning the same, or to any such effect; but on the contrary, this defendant is and always has been ready and willing to pay the same to the church-wardens of the said parish, at any time whenever they would think proper to require or receive the same: And this defendant has paid interest for the said 100*l.* at the rate of 5*l.* per cent. by the year to the church-wardens, vicar and curate of the said parish, or to one of them, for the time being, from the time of the death of this defendant's said husband to the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_: And this defendant admits it to be true, that, for the reasons herein before mentioned, she does refuse to pay, and does humbly insist, that she is no-wise liable or obliged to pay to the said other defendants *L. R. T. W.*, and *J. B.* or to any of them, the said sum of 500*l.* or any part thereof, to be by them applied in or to the several purposes by the said will declared concerning the same, or to assist in the carrying into execution the said purposes or directions of the said testator in relation thereto; and this defendant denies, that she does or ever did pretend, that the said *W. B.* the said testator, did not leave assets sufficient to pay and satisfy all his just debts, legacies and funeral expenses, or to any such effect; but on the contrary, this defendant does admit assets of the said testator's personal estate and effects, come to and now in her hands, sufficient to answer and pay the said legacies of 500*l.* and 100*l.* and the interest thereof respectively; and this defendant denies, that she hath in any manner wasted or misapplied the said testator's personal estate and effects, or any part thereof; and this defendant saith, that she hath not exhibited any inventory of the said testator's personal estate into the registry of the proper ecclesiastical court, she having never

never been called upon or desired so to do; and this defendant denies, that the said charitable bequests are in any danger of being lost, or the intention of the said testator frustrated, save only, that as to the said devise of the said 500*l.* this defendant doth humbly insist, that the same is a bad and void devise at law; and that therefore the said 500*l.* or any part thereof, ought not to be raised, or paid or applied, according to the directions of the said will; and this defendant denies all manner of unlawful combination and confederacy in the said information charged; without that, that any manner or thing in the said information contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, &c. [in the common form.]

*A bill of interpleader,*

*To the Right Honourable, &c.*

HUMBL Y complaining, sheweth unto your Lordship, your orator *J. W.* of —, That *H. T.* late of the city of *B.* in the county of *S.* being possessed of a messuage or tenement with the appurtenances, situate and being at *S.* within the manor and parish of *H.* in the county of *W.* called the *B.* Inn, and also of two closes of arable land called *W.* situate, lying and being within the said manor and parish of *H.* for the remainder of one or more long term or terms of years, determinable with the lives of him the said *H. T.* *J. T.* his son, and *M.* *M.* widow, his daughter, and the survivors and survivor of them, which said messuage or tenement, lands and premises, had been granted, and which he so held by and under two several leases thereof respectively made and executed to him by *J. W.* of — Esq;

— Esq; then Lord of the said manor, at and under the yearly rents and covenants therein respectively contained, he the said *H. T.* did sometime in the year —— duly make and publish his last will and testament in writing, and thereby give and devise all the said premisses to the said *J. T.* his son, for so long of the said terms as he should live, and after his death he gave the same to *M.* the wife of the said *J. T.* for so long of the said terms as she should live, and after her death willed and devised, that the executors of the said *J. T.* should hold and enjoy the said premisses for all the rest, residue and remainder of the said two terms then to come and unexpired, and of his said will made the said *J. T.* executor; and soon after the making his said will, he the said *H. T.* departed this life; whereupon the said *J. T.* entered upon the said premisses, and held and enjoyed the same under the said will; and he the said *J. T.* did soon after his said father's death, prove the said will in some proper ecclesiastical court, as in and by the said will, or the probate thereof under the said seal of the court, relation being thereto had, will appear. And your orator further sheweth unto your Lordship, that the said *J. T.* being possessed of the said premisses, as devisee under the said will, as aforesaid, or as executor of the said will, he and the said *M.* his wife, did some time in or about the year of our Lord —— make some mortgage of the said messuage or tenement called the *B.* inn to *J. K. E.* late of —— Esq; since deceased, for securing the repayment of the principal sum of 100*l.* with interest for the same; and at or about the same time, or shortly afterwards, they the said *J. T.* and *M.* his wife, did make some mortgage of the said two closes called *W.* to *J. C.* of the said city of *B.* barber, for securing the repayment of the principal sum of 90*l.* with interest for the same, as in and by the said mortgage deeds, had your orator

for the same to produce, relation being thereunto respectively had, would appear. And your orator further sheweth unto your Lordship, that afterwards the said principal and interest secured by the said mortgage to the said J. C. not being paid according to the proviso or condition for payment thereof in the said mortgage to him made contained, and the estate in law of and in the said two closes, being become absolute at law in him the said J. C. and there being 96*l.* 10*s.* remaining due to him for principal and interest on the said mortgage, he the said J. C. did, by some indenture by him duly executed, for the considerations therein mentioned, assign the said two closes, and all his estate, right, title and interest therein to R. K. of B. in the said county of W. yeoman, subject to redemption on payment of the principal sum of 96*l.* 10*s.* with interest for the same, by the said J. T. at the time and in the manner in the said deed of assignment mentioned, as in and by the said deed of assignment, had your orator the same to produce, relation being thereunto had, would more fully appear. And the said J. T. at or about the same time delivered him the said R. K. the possession of the said two closes, and he hath ever since been in the receipt of the rents thereof; and your orator further sheweth unto your Lordship, that the said J. K. E. some time since departed this life, having in his life-time duly made and published his last will and testament in writing, and thereof nominated and appointed C. E. spinster, his only child, executrix, who hath since his death duly proved his said will in some proper ecclesiastical court, as in and by the probate thereof under the seal of the said court, relation being thereunto had, will appear; and your orator sheweth unto your Lordship, that the estate in law of the said C. E. of and in the said messuage or tenement called the B. in being absolute in her as executrix as aforesaid, and there-

there being a large sum of money due upon the said mortgage thereof for principal and interest, she the said C. E. did, by some indenture or deed of assignment, for the considerations therein mentioned, sometime in or about the month of October last, assign the said messuage or tenement with the appurtenances, and all her estate, right, title or interest therein to the said R. K. as in and by the said last mentioned deed or indenture of assignment, had your orator the same to produce, relation being thereunto had, would appear. And your orator further sheweth unto your Lordship, that the said R. K. being possessed of and intitled to the said two closes of land, by virtue of and under the said assignment thereof, did some time in or about the month of September last demise the same to your orator by parol or word of mouth only, for the term of three years from Michaelmas now last past, at the yearly rent of —— payable —— which is the full yearly value thereof; and the said C. E. shortly before she assigned the said messuage or tenement to the said R. K. as aforesaid, had in like manner demised the same to your orator by parol or word of mouth only for three years from Michaelmas now last past, at the yearly rent of —— payable —— which is the full value thereof. And your orator sheweth unto your Lordship, that the said J. T. having got into the possession of all the premisses, the said R. K. hath caused an action of trespass and ejectment to be brought in his Majesty's court of King's Bench for recovery of the possession thereof, and hath caused a declaration in ejectment to be delivered to and served upon your orator, but at the same time told your orator, that he would not disturb your orator in his possession as tenant thereof as aforesaid, and that he only intended to recover the same against the said J. T. and your orator having given notice of and delivered over the said declaration

declaration to the said J. T. he alledged to your orator, that he had paid off and satisfied the said R. K. all monies due on the said two mortgages, and told your orator he need not give himself any trouble about it, declaring that he the said J. T. would defend the said suit, and the possession of the said premises. And your orator sheweth unto your Lordship, that —— being a year's rent, became due from your orator for the said premises; and they the said R. K. and J. T. have both of them demanded the same of and from your orator, and do each of them insist to be paid the same; and your orator sheweth unto your Lordship, that your orator confiding in such the declarations of them the said R. K. and J. T. with respect to the said ejectionment, did not make any defence thereto, but by collusion between them the said R. K. and J. T. the said J. T. having caused himself or your orator to be made tenant in the room of the casual ejector, the said cause was by the said R. K. carried down in order to be tried at the last assizes held in and for S. in the said county of W. and the jury being sworn, and the said J. T. or any on his or your orator's behalf, not appearing to confess lease, entry and ouster, the plaintiff in the said ejectionment was nonsuited, and the *posse* being returned, judgment hath been thereupon given against the casual ejector, and the said R. K. threatens that he will cause a writ of possession to be sued out upon the said judgment, and will turn your orator out of possession of the said premises, and will cause an action to be brought against your orator for the mesne profits thereof; and they both threaten to distrain your orator's goods for the said rent, and otherwise to proceed against your orator a law for the same, so that your orator is not able to determine or judge to which of them the said rent of right belongs, or is payable, nor to which of them securely and with safety to pay the same; and

they

they both declare and threaten they will turn your orator out of possession of the said premises, and not suffer your orator to hold or enjoy the same. All which actings and doings of the said R. K. and J. T. (who combine and confederate together, and with divers other persons at present unknown to your orator, whose names, when discovered, your orator prays may be inserted herein, and they made parties, with apt words to charge them how to injure and oppress your orator, in and touching the premises) are contrary to equity and good conscience, and tend to your orator's manifest wrong and oppression. Ill tender consideration whereof, and forasmuch as your orator is remediless in the premises by the rules of common law, and can only be relieved in a court of equity before your Lordship, where matters of this nature are properly cognizable, and where your orator may compel the said claimants to interplead and settle and adjust their rights and demands between themselves, so that your orator may be enabled to pay the said rent with safety; and for that your orator's witnesses, who could prove the truth of the several matters aforesaid, are dead, or gone into parts beyond the seas remote, and to your orator unknown; To the end therefore, that the said R. K. and J. T. and the rest of the confederates (when discovered) may, upon their respective corporal oaths, full, true and perfect answer make (according to the best of their knowledge, remembrance, information and belief) to all and singular the matters aforesaid, as fully and effectually to all intents and purposes, as if the same were here repeated, and they particularly and distinctly interrogated; and more especially that they may set forth and discover, whether the said H. T. was not in his life-time possessed of the said messuage or tenement, and two closes of land, for some and what term or terms of years determinable in manner as aforesaid,

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or how otherwise; and whether he did not in his life-time duly make and publish his last will and testament in writing, and thereby give and devise the premisses, or any, and what part thereof, to such persons and in such manner as aforesaid, or how otherwise; and whether the said J. T. and M his wife, or either and which of them, did not become possessed of or intitled under the said will, or how otherwise, to the said premisses, or any and what part thereto; and whether the said J. T. and M his wife, or the said J. T. alone, did not make some, and what mortgage of the said messuage or tenement called the B. inn, to the said J. K. E. and whether the estate at law of the said J. K. E. or of the said C. E. therein did not become absolute; and whether he the said J. K. E. is not dead, and where he died, and whether he did not in his life-time make the said C. E. his only child executrix thereof; and whether she as executrix as aforesaid, did not become possessed of or intitled to the same; and whether she did not make such assignment thereof as aforesaid, or any other, and what assignment, and when, to the said R. K. or how otherwise he the said R. K. became possessed of or intitled to the same; and whether as they know, have heard or do believe, the said C. E. before the making the said assignment, did not demise the said messuage or tenement to your orate by parol or word of mouth, or how otherwise, for such term of three years from Michaelmas last, or for what other term, at such yearly rent as aforesaid, payable as aforesaid, or what other rent and how payable; and whether they the said J. T. and M his wife, or the said J. T. alone, did not make some, and what mortgage of the said two closes in the said J. C. and whether the estate of the said J. C. therein did not become absolute at law; and whether the said J. C. did not afterwards, and when make some and what assignment thereof to the said

R. K.

R. K. and whether he the said R. K. did not, and when, demise the said two closes to your orator by parol or by word of mouth, or how otherwise, for such term of three years from Michaelmas last, or for what other term, at such yearly rent as aforesaid, payable as aforesaid, or what other rent, and how payable; and whether the said R. K. hath not caused a declaration of ejectment to be delivered, and when, to your orator; and whether he did not make and give your orator such assurance concerning the same as aforesaid, or what else he said, intimated or signified to your orator concerning the same; and whether he the said J. T. did not cause himself to be made defendant in the said action in the room of the casual ejector, and whether he did not undertake or promise to defend the same, and whether he any ways, and how, did defend the same; and whether the plaintiff in the said ejectment was not nonsuited at the said last S. assizes on account of the said J. T.'s not appearing to confess lease, entry and ouster, and how otherwise; and whether thereupon judgment hath not been had, or is not intended to be had against the casual ejector; and whether he the said R. K. hath not threatened or declared, that he would cause a writ of possession to be sued out upon the said judgment, or doth not intend so to do; and whether they the said R. K. and J. T. have not threatened to turn your orator out of the possession of the said premises, or any and what part thereof; and whether there is not now due for rent of the said premises the sum of — or any other, and what sum; and whether they do not both demand the said rent, or threaten to distrain or sue your orator for the same, or which of them so doth, and that they may set forth to which of them the said rent doth of right belong, or is payable, and may interplead and settle and adjust their said demands between themselves; your orator being will-

ing to pay the said rent to either of them, to whom the same shall appear of right to belong, being indemnified; and that your orator may be at liberty to bring the same into this honourable court, which your orator doth hereby offer to do for the benefit of such of the said two parties who shall appear to be intitled thereto; and that they the said R. K. and J. T. and each of them, may be restrained by the injunction of this honourable court from proceeding at law against your orator for the said rent, and also from proceeding in the said ejectment, or any other ejectment for recovery of the said premises or any part thereof, during the remainder of the said three years, for which the said premises were severally demised to your orator as aforesaid; and that your orator may be quieted in the possession of all and singular the said premises during such the remainder of the said term of three years; and that your orator may have and receive such further and other relief in and touching all and singular the matters and things aforesaid, as to your Lordship shall seem meet and agreeable to equity and good conscience; May it please your Lordship, &c.

*Note;* To this bill an affidavit must be annexed, that the plaintiff doth not in any respect collude with either of the defendants touching all or any of the matters in question in the cause, nor is any ways indemnified by either of the defendants; nor doth exhibit his bill at the request or with the knowledge of either of them, but merely of his own free will, and to avoid being doubly vexed touching the matters contained in his bill.

A special

*A special conclusion to a bill exhibited against  
the Attorney General and others.*

—**M**AY it please your Lordship to grant unto your orator his Majesty's most gracious writ and writs of subpoena to be directed to the said A. B. C. D. and E. F. thereby commanding them and every of them, at a certain day and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there full and perfect answer to make to all and singular the premisses; and that the Attorney General, being attended with a copy of this bill, may appear, and put in his answer thereto; and that all the said defendants may farther stand to and abide such order, direction and decree in the said premisses, as to your Lordship shall seem meet. And your orator shall ever pray, &c.

*An answer to a bill of foreclosure.*

*The Answer of, &c.*

**T**HE defendant saving, &c. answereth and saith, that he admits, that he being seised of, and interested in, or otherwise intitled to, the fee-simple and inheritance of and in the several messuages and lands in the complainant's bill mentioned, and having occasion for the sum of —, this defendant in the year — applied to the complainant to lend him the same; and for securing the repayment of the said sum of — and interest, this defendant proposed to convey and assure the said several messuages and lands to the complainant, and accordingly this defendant admits, that by such in-

denture of mortgage, as by the complainant's bill is mentioned to bear date the — day of — and made between this defendant by the name of — of — in the county of — of the one part, and the complainant, by the name of — of — &c. of the other part, this defendant, in consideration of the sum of — paid by the said complainant to this defendant, did grant, bargain, sell, alien, release and confirm unto the said complainant and his heirs the said several messuages, lands, tenements and premisses in the said complainant's bill for that purpose more particularly mentioned and set forth, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all his estate therein, together with all deeds, evidences and writings touching or concerning the premisses, to hold unto the said complainant, his heirs and assigns for ever; and this defendant does admit, that in such indenture of mortgage there is a proviso to the effect in the complainant's bill mentioned; and likewise that there is such a *memorandum* or indorsement on the back of the said indenture of mortgage, to the effect in the complainant's bill also mentioned; and likewise, that for the further and better securing the payment of the said sum of — with interest to the complainant, this defendant did enter into such obligation to the complainant, as in the complainant's bill in that behalf is mentioned, and with such condition as in the complainant's bill is set forth; but for greater certainty as to the said indenture of mortgage, indorsement and bond, this defendant refers himself to the same respectively, when they shall be severally produced. And this defendant does admit, that the said sum of — or any part thereof, or any interest for the same, was not paid to the complainant, pursuant to the proviso in the said indenture of mortgage contained, and that thereby

thereby the complainant's estate and interest in the mortgaged premises may become absolute in law; and this defendant does admit, that the complainant either by himself, or others on his behalf, may have applied to him for the payment of the interest of the said ——, and on the defendant's not paying of the same, that this defendant should pay the whole principal and interest, but does not remember or believe that the complainant, or any person on his behalf, ever applied to him to release his equity of redemption in the said mortgaged premises, which said premises this defendant saith that he had power to assign to the complainant, as is herein before mentioned, and not assigned over to any other person or persons, or incumbered or charged in any other manner than as is herein before mentioned: And this defendant does admit, that he has not paid to the complainant any interest for the said —— or any part of the said principal sum of —— but this defendant saith, that on the —— day of —— now last past, there was no more due to the complainant from this defendant, for the interest of the said —— than the sum of ——, which said premises, notwithstanding such arrears of interest, this defendant humbly apprehends to be an ample security for the said principal sum of —— and interest, the said premises being of considerable value, and at the improved rent of —— and upwards, and therefore humbly hopes that this court will allow him a reasonable time to redeem and pay off the said mortgage, as he is willing and desirous so to do; and this defendant denies all and all manner of unlawful combination and confederacy in the complainant's bill charged against him; without that, that there is any other matter or thing in the complainant's said bill of complaint contained, material or effectual for this defendant to make answer unto, and not herein and hereby sufficiently answered

unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honourable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

*An answer of infants by their guardian.*

Sworn the — day  
of — 1744. by the  
said D. B. as guar-  
dian of the said de-  
fendants the infants,  
pursuant to an order  
bearing date the —  
day of — 1744. be-  
fore me —

The joint and several answer of  
A. B. and C. D. infants,  
under the age of 21 years,  
by D. B. their mother and  
guardian, two of the defen-  
dants, to the bill of com-  
plaint of E. F. widow, com-  
plainant.

THE said defendants, saving to themselves, and each of them, all and all manner of advan-  
tage of exception to the many untruths, errors, un-  
certainties, and other imperfections in the said bill  
of complaint contained, for answer thereunto, or to  
so much thereof as these defendants are advised is  
material for them, or either of them, to make an-  
swer to, they, answering by their said guardian, se-  
verally say, That they are strangers to all and sin-  
gular the matters and things in the said bill of com-  
plaint contained, otherwise than that these defen-  
dants have heard, that G. B. their grandfather, in  
the bill named, was seised of or intitled to several  
lands and tenements, and also possessed of a con-  
siderable personal estate; and also have heard that  
these defendants father H. B. in the bill mentioned  
died intestate; and also that their said grandfa-  
ther and father made some provision for these defendant

by bond, settlement, or otherwise: And these defendants being infants of tender years submit themselves to the judgment of this honourable court, and humbly hope that what right or title they, or either of them, have to the real or personal estates of their grandfather, or father, shall be protected and saved to them respectively: Without that, that, &c.

*An answer and disclaimer.*

*The several answer and disclaimer of A. B. one of the defendants to the bill of complaint of — complainants.*

THIS defendant, saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception, that may be had and taken to the many untruths, incertainties, insufficiencies and imperfections, in the said complainants said bill of complaint contained, for a full and perfect answer thereunto, or to such part thereof as it materially concerns this defendant to make answer unto, he answereth and saith, That he believes that C. D. did die seized of such estates as in — and — as in the said complainants said bill are mentioned; and this defendant does believe that the said C. D. did make such last will and testament in writing, and did thereby create such trusts out of the said — estates, and appointed this defendant trustee thereof, in such manner and to such purport and effect, as in the said complainants said bill for that purpose set forth; and this defendant does believe that the said testator made E. F. Gent. executor of his said will; and this defendant does believe that the said C. D. soon after making his said will departed this life, that is to say, on or about the — day of — in the year H h 4

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year — without revoking or altering his said will, seised of such estates in — and — as in the said complainants said bill are set forth: And this defendant further saith, that he was advised that the said trust would be attended with some difficulty, besides expence and loss of time to this defendant; therefore this defendant absolutely refused to intermeddle therewith, or any way concern himself therein: And this defendant denies, that he or any for him ever entered on the said trust-estate, or ever received any of the rents and profits thereof; but this defendant hath been informed and believes the same were received by G. H. of the city of — in the said county of — Gent. who was employed by the said testator C. D. in his life-time to receive the rents and profits of the said — estate for the said C. D. and this defendant doth believe, that the said G. H. hath received the said rents and profits of the said trust-estate ever since the death of the said testator C. D. and still doth continue to receive the same: And this defendant positively denies that the said G. H. had any power, authority or direction from this defendant to receive all or any part of the rents and profits of the said trust-estate, or that he ever accounted with this defendant for the same: And this defendant is very desirous and ready to be discharged from his said trust, and to do any act for that purpose as this honourable court shall direct, this defendant being indemnified in so doing, and having his costs. And this defendant farther saith, that as so much of the said bill as seeks a discovery of this defendant's title to the lands in — this defendant saith, that he doth not know that he this defendant to his knowledge or belief ever had, nor did he claim or pretend to have, nor doth he now claim or pretend to have, any right, title or interest of, in or to the said

aid estate in — in the said complainant bill set forth, or any part thereof; And this defendant doth disclaim all right, title and interest to the estate in — in the complainants said bill mentioned, and every part thereof. And this defendant doth deny all manner of unlawful combination and confederacy unjustly charged against him in and by the said complainants said bill of complaint; without that, that any other matter or thing in the said complainants said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traverse or denied, is true: All which matters and things this defendant is ready to aver, maintain and prove as this honourable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained,

C H A

## C H A P. IX.

## Pleas, answers and demurrers.

*Pz of a former suit depending for the same matter.*

*Ed the — day  
of — 1744.*

*The plea of C. D. Gent. one  
of the defendants, to the bill  
of complaint of A. B. Esq;,  
complainant.*

*Note; this  
plea is with-  
out oath.*

THE said defendant by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's said bill of complaint contained to be true, in such manner and form as the same are therein declared and forth, for plea thereunto saith, that heretofore, and before the said complainant exhibited his bill in this honourable court, to wit, on the — day — which was in the year of our Lord —, the said now complainant, together with — and — in the said bill named, did exhibit their bill of complaint into this honourable court against this defendant, and also against — for the same matters, and to the same effect, and for the like relief and purpose as against this defendant, as the now complainant doth by his present bill set forth; to which said first bill this defendant did put in his answer, and the then complainant thereunto replied, and the said former bill is still depending in this honourable court, and the said cause is yet undetermined; and therefore this defendant doth plead the said

said former bill, answer and proceedings in bar to the said now complainant's said present bill; and humbly prays the judgment of this court, whether he shall be compelled to make any farther or other answer thereunto; and prays to be hence dismissed with his costs and charges in this behalf sustained.

*A plea of the stat. of limitations in bar of an account.*

Sworn the — day  
of — 1744. be-  
fore

*The plea of C. D. Gent. de-  
fendant, to the bill of com-  
plaint of A. B. Gent. com-  
plainant.*

**T**HIS defendant by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's said bill of complaint contained to be true, in such manner and form as the same are therein and thereby charged and alledged, for plea unto the said bill saith, That if the complainant, either in his own right, or as executor of — in the bill named, ever had any cause of suit against him this defendant, for or concerning any the matters, transactions or dealings in the said bill of complaint mentioned (which this defendant doth in no sort admit) the same did accrue or arise above six years before filing the said bill, and above six years before serving this defendant with any other process to appear to and answer the same: And this defendant farther for plea saith, and doth aver, that he did not at any time within six years before filing the complainant's said bill of complaint, nor within six years before this defendant was served with process to appear and answer thereto, ever promise or agree to come to any account for, or to pay or any ways satisfy the said complainant

any

any money, for or concerning any the matters, transactions or dealings in the complainant's said bill of complaint charged or alledged ; and therefore this defendant doth plead the act of parliament or statute of limitations, made in the 21st year of King James the first, and prays the benefit of the said act of parliament for limitation of actions : All which matters this defendant doth aver and plead in bar of the complainant's said bill, and of the complainant's pretended demands, for which he seeks to be relieved by his said bill ; And this defendant prays to be hence dismissed with his reasonable costs in this behalf wrongfully sustained.

*A plea in bar of a verbal agreement, where a bill is brought to carry it into execution, and to reduce it into writing.*

Sworn the — day  
of — 1744 be-  
fore .

*The plea of C. D. one of the defendants to part, and his answer to the residue of the bill of complaint of A. B. and others, complainants.*

**T**HE end of the plaintiff's bill is to compel this defendant to perform an agreement thereby suggested to have been made by this defendant with the complainant, for the granting or executing to the complainant a lease in writing of the several lands and tenements in the bill mentioned, for the term of ten years, from the feast of St. Michael the archangel, which was in the year of our Lord God — pursuant to such precedent agreement ; this defendant by protestation, not confessing or acknowledging all or any the matters or things in the said bill contained to be true,

in

in such sort, manner and form, as the same are therein and thereby charged, alledged or set forth, as to so much of the said bill as seeks to compel this defendant, or any person or persons claiming under him, to execute a lease in writing of the several lands and tenements in the bill mentioned, or of any of them, or of any part thereof, pursuant to the pretended agreement in the bill mentioned, and as to any the relief thereby prayed touching such lease and agreement, this defendant doth plead in bar; and for plea saith, that by an act of parliament made in the 29th year of the reign of his late Majesty King *Charles* the Second, intitled, *An act for prevention of frauds and perjuries*, it is amongst other things enacted, That from and after the 24th day of June 1677, no action shall be brought whereby to charge any person upon any contract of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised, as by the said act may appear: And this defendant avers, that neither he this defendant, nor any person by him lawfully authorised, did ever make or sign any contract or agreement in writing for making or executing any lease to the complainant of the same premisses, or any of them, or of any part or parcel thereof, or to any such effect, as by the said bill is suggested, or any memorandum or note in writing of any agreement whatsoever, for or concerning the demising or leasing, or making or executing any lease of the said premisses, or any of them, or any part or parcel thereof to the complainant; and therefore this defendant doth plead the said act of parliament, and matters aforesaid, in bar to so much and such part of the said bill

bill as seeks to compel this defendant or any person or persons claiming under him, to execute a lease to the complainant of the several lands and tenements in the bill mentioned, or of any of them, or of any part or parcel thereof, pursuant to the said pretended agreement, and as to any the relief thereby prayed touching such lease and agreement, and humbly prays the judgment of this honourable court, whether he shall be compelled to make any farther or other answer to so much and such part of the said bill as is herein and hereby pleaded unto as aforesaid: And this defendant not waiving his said plea, but wholly relying and insisting thereon, for answer to the residue of the complainant's bill not herein before pleaded unto, or to so much thereof as he this defendant is advised is material or necessary for him to make answer unto, he answereth and saith, &c. [Here recite such answer as counsel shall advise the defendant to make to the residue of the complainant's said bill, and conclude thus] Without that, that any other matter or thing in the complainant's said bill of complaint contained, material or effectual for this defendant to make answer unto, and not herein before pleaded and answered unto, confessed or avoided, traversed or denied, is true: All which matters and things this defendant is ready to aver, justify, maintain and prove, as this honourable court shall award and direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf sustained.

A plus

*A plea of the statute of 29 Car. 2. c. 3. in bar to  
a pretended agreement, and also a misnomer.*

Sworn, &c.

*The several plea and answer of  
C. D. one of the defendants  
to the bill of complaint of  
A. B. complainant.*

THE said defendant by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill of complaint set forth and alledged to be true, for plea thereunto saith, that he is advised that the complainant, by his bill of complaint, seeks to have a discovery of a supposed undertaking and promise, suggested to be made by this defendant some time in or about the month of \_\_\_\_\_ which was in the year of our Lord \_\_\_\_\_ wherein this defendant is supposed to undertake and promise the complainant to satisfy and pay him for whatever goods and wares the complainant should from thenceforth sell to \_\_\_\_\_ another defendant in the said bill named; and that under such pretended agreement the complainant hath sold and delivered unto the said \_\_\_\_\_ the several parcels of goods mentioned in a schedule annexed to the said bill, amounting to the sum of \_\_\_\_\_ as to so much and such part of the said bill which seeks a discovery from this defendant relating to such pretended undertaking or promise, or any relief thereupon, this defendant pleadeth, that by a statute or act of parliament made in the 29th year of the reign of King Charles the Second, intituled, *An act for prevention of frauds and perjuries*, it is amongst other things enacted, That from and after the 24th day of June which was in the year of our Lord 1677, no contract for sale of any goods,

goods, wares and merchandizes for the price of 18*l.* Sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised; which statute, and particularly the said clause therein and hereip before mentioned, this defendant doth plead in bar to the complainant's demands, the complainant not suggesting in and by his said bill of complaint, that this defendant did accept any part of the goods suggested in and by the said bill of complaint to be sold, or actually received the same, or gave any thing in earnest to bind the bargain, or in part of payment; nor that any note or memorandum in writing of such pretended bargain was made and signed by this defendant, or by any agent lawfully authorised by this defendant, otherwise than as it is pretended and suggested in and by the said bill of complaint, that this defendant did, at the time of such pretended undertaking and promise, write down his this defendant's name on a piece of paper, and deliver the same to the complainant: And this defendant for farther plea saith, that the complainant in and by his said bill of complaint doth call this defendant by the name of —; whereas this defendant doth aver, that his name is —, and that he this defendant was always known by the name of —, and that this defendant always signed his name — to the best of this defendant's knowledge, remembrance and belief; therefore this defendant doth likewise plead the said misnomer in bar of any farther discovery and relief prayed by the said bill, and humbly claims the benefit thereof. And for answer to the residue

residue of the said bill of complaint, or to so much and such part thereof as this defendant is advised materially concerns him to make answer unto, this defendant answereth and saith, *That* he believes it may be true that the said —— was by trade a ——, and that the complainant might have dealings with him the said —— in the way of his trade, and that the said —— might be a prisoner for debt in the King's Bench prison, about the time for that purpose set forth in the bill; and this defendant farther answering saith, that he doth not remember that about the time in the bill set forth, or at any other time, this defendant did write down his name on a piece of paper, and deliver the same to the complainant; and this defendant is the rather induced to believe that he did not so write down his name on a piece of paper, and deliver the same to the complainant, because the complainant throughout the said bill of complaint hath called this defendant, by the name of —— whereas this defendant never wrote any other name for himself than —— to the best of this defendant's knowledge, remembrance and belief; and therefore if this defendant had wrote his name on a piece of paper, and delivered the same to the complainant, this defendant verily believes that the name pretended to be wrote on such piece of paper would have been —— and not ——; however, if the complainant has any such piece of paper, this defendant leaves the complainant to make such use thereof as he shall be advised: For all which causes this defendant doth humbly demand the judgment of this honourable court whether he shall be compelled to make any farther answer unto the complainant's said bill of complaint than as aforesaid. And this defendant doth deny all unlawful combination and confederacy, without that, that any other matter or thing in the complainant's said bill of complaint

## Pleas, Answers and Demurrers.

contained, material or effectual for this defendant to make answer unto, and not herein before pleaded and answered unto, confessed or avoided, traversed or denied, is true: All which matters and things this defendant is ready to aver, justify, maintain and prove, as this honourable court shall order and direct. And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

**Sworn, &c.**

*A plea of the Statute of limitations in bar of an account.*

**T**HIS defendant by protestation, not confessing or acknowledging all or any the matters and things in the complainant's said bill of complaint contained to be true, in such manner and form as the same are therein alledged and set forth, as to so much of the said bill as seeks an account and discovery of the estate or effects of *A. B. Gent.* deceased, this defendant's testator, or that seeks satisfaction for or on account of any money received by the said *A. B.* on account of \_\_\_\_\_ in the bill named, or for or on account of the complainant; or that seeks a discovery how many hogsheads of tobacco or rice, or any other commodities pretended to be consigned to the said *A. B.* or that seeks a satisfaction for the same, or that seeks a discovery or satisfaction for any of the monies, goods or effects of the said \_\_\_\_\_ come to the hands of this defendant since the decease of the said *A. B.* this defendant pleads thereto, and for plea faith, that \_\_\_\_\_ in the bill named, under whom the complainant pretends to claim, departed this life in or about the year \_\_\_\_\_, and that *A. B. Gent.* this defendant's

defendant's testator, departed this life in or about the month of ——, and that the monies and effects pretended to be received by the said *A. B.* or by this defendant, and the goods and commodities pretended to be consigned, if any sums of money, goods or effects were received by the said *A. B.* or by this defendant (which this defendant doth not in any sort admit) that all and every such sums of money, goods and effects, were received by the said *B.* or by this defendant above six years before this defendant was served with any process of this court to answer the said bill, or any process was sued out against this defendant to call this defendant to an account for the same ; and that if the complainant had any cause of action or suit against this defendant, or against the said *A. B.* for or concerning any of the said matters, (which this defendant doth not admit) that such cause of action or suit did accrue or arise above six years before filing of the said bill, or serving this defendant with process to appear to and answer the said bill : Nor did this defendant or his said testator, at any time within six years before exhibiting the said bill or suing out process against this defendant, promise or agree to come to any account, or to make satisfaction, or to pay any sum or sums of money for or by reason of any of the said matters ; and therefore this defendant doth plead the act of parliament made in the twenty-first year of the reign of King James the first, for the limitation of actions, and avoiding of suits at law ; and stayeth the benefit of the said act, and pleads the same to bar of so much of the complainant's said demands in his said bill set forth and mentioned ; and prays the judgment of this honourable court thereon. And this defendant not waving his said plea, but wholly relying and insisting thereon, for answer to the residue of the complainant's said bill, or to so much thereof

## Pleas, Answers and Demurrers.

thereof as he this defendant is advised is material or necessary for him to make answer unto, he this defendant answereth and saith, &c.

### A plea of outlawry.

**Sworn, &c.**

*The plea of A. B. defendant  
to the bill of complaint of  
C. D. complainant.*

THE said defendant by protestation not confessing or acknowledging all or any of the matters or things in the complainant's said bill of complaint contained to be true; in such manner and form as the same are therein and thereby set forth alledged and declared, for plea thereunto saith, That the said complainant now is and standeth a person outlawed, and is thereby disabled by the laws of this realm to sue or commence any action or actions, suit or suits in this honourable court, or in any other court, until the said outlawry be reversed by due course of law; for this defendant saith, that on Monday next before the feast of the purification of the blessed Virgin Mary in the tenth year of the reign of our late Sovereign Lord King —— the said complainant by the name of C. D. was outlawed in an action of trespass at the suit of —— as by the said outlawry *sub pede sigilli* hereunto annexed may appear; which said outlawry doth yet stand and remain in full force and unreversed: And this defendant doth aver that the said C. D. the complainant named in the said bill of complaint and the said C. D. named in the said writ of *copia illegatum* hereunto annexed, is one and the same person, and not diverse and several: And therefore this defendant doth humbly demand the judgment of this honourable court, whether or no he shall be com-

compelled to make any other or farther answer to the complainant's said bill of complaint, until the said complainant shall have reversed the said outlawry, and thereby become a person of ability and capable to exhibit a bill of complaint against this defendant; and in the mean time this defendant prays to be dismissed with his reasonable costs, in this behalf wrongfully sustained.

*Plea to a bill exhibited by a feme covert in her own name,*

*Sworn, &c.*

*The plea of E. F. defendant,  
to the bill of complaint of  
L. M. complainant.*

THE said defendant, not confessing all or any of the matters and things in the complainant's said bill of complaint contained to be true, in such manner and form as they are therein and hereby set forth, for plea thereunto this defendant saith, That the plaintiff at and before the exhibiting her said bill of complaint was married to one —— who is yet living, which this defendant doth aver and will prove, if there be occasion; and therefore this defendant doth plead the same in abatement to the complainant's said bill of complaint, and humbly craves the judgment of this honourable court, whether he shall make any answer thereunto; And humbly prays to be hence dismissed with his costs and charges, in this behalf sustained.

*A demurrer for want of equity.*

*The demurrer of C. D. one the defendants, to the bill  
of complaint of A. B. complainant.*

**T**HIS defendant by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true, in manner and form as the same are therein and thereby set forth and alledged, saith she is advised by her counsel, that there is no matter or thing in the said bill contained good and sufficient in law to call this defendant in question in this honourable court for the same, but that there is good cause of demurrer thereunto, and therefore this defendant doth demur thereunto, and for cause of demurrer this defendant saith, That the complainant's said bill (in case the allegations therein contained were true, which this defendant doth in no sort admit) contains not any matter of equity whereon this court can ground any decree, or give the complainant any relief or assistance, as against her this defendant; wherefore, and for diverse other errors and imperfections in the said bill appearing, this defendant doth demur in law thereunto; and humbly demands the judgment of this honourable court, whether she shall be compelled to put in any farther or other answer to the said bill; and humbly prays to be hence dismissed with her reasonable costs, in this behalf most wrongfully sustained.

*Ad-*

*A demurrer for want of parties.*

*The demurrer of C. D. defendant, to the bill of complaint of A. B. complainant.*

AS to so much of the complainant's bill where-  
by the complainant doth intitle himself to,  
and demands from this defendant as executrix of  
*E. F.* in the bill named, the sum of \_\_\_\_\_ and in-  
terest, under a letter of appointment, pretended to  
be directed to *G. H.* in the bill named by *J. K.* also  
in the said bill named, and another defendant there-  
to; whereby the said other defendant *K.* did direct  
the said *H.* to pay \_\_\_\_\_ in the manner in the bill  
mentioned, and for that the said *H.* as is pretended,  
had notice of an assignment in the bill mentioned of  
the said \_\_\_\_\_ to the complainant, and promised  
to pay the same: This defendant by protestation,  
not confessing or acknowledging the complainant's  
bill to be true, in such sort, manner or form, as  
the same matters are therein set forth, this defendant  
doth demur thereto, and for cause of demurrer  
sheweth, That by the complainant's own shewing in  
his bill, the said *G. H.* is dead, and neither his ex-  
ecutor or administrator is made a party to the said  
bill; and therefore, and for other good cause or  
causes of demurrer in the bill contained, as to so  
much of the complainant's laid bill as is demurred  
unto as aforesaid, this defendant doth demand the  
judgment of this honourable court, whether this  
defendant shall be compelled to make any answer  
thereunto, otherwise than as aforesaid. And this  
defendant humbly prays to be hence dismissed with  
her costs, in this behalf wrongfully sustained.

*A demurrer to a bill where it appears by the plaintiff's own shewing that she has no equity.*

*The joint and several demurrer of C. D. and E.F. two of the defendants to the bill of complaint of A. B. widow, complainant.*

THE said defendants by protestation, not confessing or acknowledging all or any of the matters or things in the complainant's said bill of complaint to be true, in such sort, manner and form, as the same are therein and thereby set forth and alledged, for answer to the said complainant's bill of complaint, these defendants do demur in law, and for cause of demurrer say, That it appears of the plaintiff's own shewing in her said bill of complaint, that she claims or pretends title to one third of the premisses in question in the bill mentioned, as a person next in remainder in tail, under a devise in a will in the said bill mentioned and set forth; which is a matter merely triable at law; and touching which the complainant may sufficiently ascertain her title by ejectment or ejectments to be brought at law; wherefore, and forasmuch as the complainant's said bill of complaint doth not contain (as these defendants are advised) any matter of equity sufficient to establish any right or demand against these defendants or either of them, nor to draw them in suit into this honourable court touching the matters complained of in the complainant's said bill of complaint, and also for many other errors and imperfections in the complainant's said bill of complaint contained, these defendants do demur in law thereupon and humbly crave the judgment of this honourable court, whether they ought to make answer to the said bill of complaint; and humbly pray to be

be hence dismissed with their costs, in this behalf wrongfully sustained.

*A demurrer where the defendants are charged with felony or compounding felony.*

*The demurrer of the defendants C. D. G. H. and E. his wife to part, and their answer to other parts of the bill of complaint of A. B. complainant.*

**A**S to so much of the complainant's bill as seeks to charge these defendants or any of them with the concealing or compounding the felony in the bill mentioned, or as seeketh to compel any of these defendants to make any discovery touching the same, or any of the matters relating thereto, in the bill suggested or alledged, these defendants by protestation, not confessing or acknowledging any of the matters or things relating thereto to the said bill comprised to be true, in such sort, manner and form, as therein the same are alledged or set forth, these defendants do demur, and for cause of demurrer shew, That they ought not to be compelled to discover or set forth any matters whereby they may impeach or accuse themselves of an offence or crime for which they may suffer corporal punishment, or be grievously fined; and therefore, and for diverse other good causes of demurrer, in the complainant's said bill of his own shewing appearing, these defendants, as to so much of the complainant's said bill as before is set forth, do demur, and do demand the judgment of this honourable court, whether they, or any of them ought, or shall be compelled, to make any answer thereto, other, or otherwise than as aforesaid; and humbly pray to be hence dismissed with their costs. And these defendants by way of answer do deny, &c.

*A de-*

*A demurrer for want of parties, and for want of an affidavit, to a bill brought for a discovery of a deed.*

*The demurrer of A. B. and J. his wife, defendants, to the bill of complaint of C. D. complainant.*

**T**HE said defendants by protestation, not confessing or acknowledging all or any the matters and things in the complainant's bill of complaint alledged and set forth to be true, in such manner and form, as the same is and are thereby set forth, say, That they are advised that the substance of the said bill is to discover a deed suggested to be made by \_\_\_\_\_ in the said bill named, whereby \_\_\_\_\_ *per annum*, or some such provision was made for the benefit and advantage of his younger sons, and payable out of his lands, and that the plaintiff is the survivor and intitled to the said provision, and that the said lands, upon the death of the said \_\_\_\_\_, descended or came to his eldest son and heir \_\_\_\_\_ deceased, of whom the plaintiff, as is suggested, demanded the benefit of the said deed; but before any benefit obtained, he the said \_\_\_\_\_ died, leaving two daughters his heirs, and that the plaintiff after the death of the said \_\_\_\_\_ made his application to this defendant \_\_\_\_\_ the relict of the said \_\_\_\_\_ and sent the deed to her, and that the said deed is now in the hands of the said defendants, who, by combination with the said daughters and heirs, do refuse to pay the plaintiff the said provision made by his father and the arrears thereof, or permit him to enjoy the lands out of which the same is issuing, and therefore prays a discovery of the said deed, and to have the arrears of the said provision and farther relief: To which bill these defendants, as advised,

do

do demur, and for cause of demurral say, That the plaintiff ought according to the rules of this court to have made affidavit that he had not in his custody or power the deed of which he seeks a discovery, and for want whereof he prays relief in this court; and also for that the said complainant seeks relief for arrears of a provision of — — *per annum*, or some other provision made by the supposed deed, and to have relief in this court, to make good the same for the future, and yet hath not made the executors or administrators, nor the heirs of the said — parties to his bill, who are (as these defendants are advised) the proper persons intitled and interested to contest the said arrears or future payment thereof, and the relief prayed in and by the complainant's said bill: And although he hath taken notice in his bill of the said daughters and heirs, yet hath he not made them defendants, nor prayed any process against them: Wherefore, and for many other errors and defects in the said bill, the said defendants do demur in law, and do humbly pray the judgment of this honourable court, whether they shall be compelled to make any other or farther answer thereto; and do also humbly pray to be hence dismissed, &c.

*A demurrer for that the plaintiffs have not intituled themselves to prosecute.*

THE said defendants by protestation, not confessing or acknowledging all or any of the matters or things in the complainants bill of complaint contained to be true, in such manner, sort and form, as the same are therein and thereby set forth and alledged, do demur thereunto, and for cause of demurrer shew, That the scope and end of the complainants bill is to be relieved touching several sums of money by the said bill supposed to be due from these defendants to one — deceased,

in

## Pleas, Answers and Demurrs.

in the said bill named, which the complainants would, or seek by their said bill to claim as executors to the said —, and yet have not alledged in or by their said bill, that they have proved the will of the said —— (if any such was made) or otherwise taken upon them the burden or execution thereof, or any ways intitled themselves unto her personal estate, and to sue for the same : Wherefore, and forasmuch as the said complainants have not well and sufficiently intitled themselves in and by their said bill to the said money (if any had been due from these defendants or either of them to the said —— ) as is thereby supposed, and for that, should these defendants pay the money demanded by the said bill to the complainants before they have either proved the will or sued out administration, they cannot sufficiently, as these defendants are advised and insist, discharge these defendants, nor give these defendants any proper receipt or receipts for the same, but that they shall or may be liable to be questioned again by such person as may sue out administration to the said — with the said will annexed, or otherwise, for which and divers other causes these defendants do demur in law unto the complainants said bill of complaint, and all the matters and things therein contained; and humbly demand the judgment of this honourable court, whether they, or either of them, shall be compelled to make any other or farther answer thereunto; and pray to be hence dismissed with their costs, &c.

*Demur*

*Demurrer to a bill seeking to have a will established, and to perpetuate the testimony of witness, and praying relief.*

*The demurrer of A. B. and C. D. defendants, to part, and their answer to other part of the bill of complaint of E. F. complainant.*

THE said defendants by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's bill mentioned to be true, in such manner and form as the same are therein set forth, as to so much of the said bill as seeks to have the will of — deceased, in the said bill named, established against these defendants by the decree of this honourable court, these defendants do demur, and for cause of demurrer do shew, That it appears by the said complainant's own shewing in and by the said bill, that the said complainant hath not any equity or title whereon such decree can be grounded or made against these defendants, or either of them, and the validity of the said will is a matter properly triable at law; wherefore, and for divers other errors and imperfections appearing in the said bill, these defendants do demur to so much and such part of the said bill as aforesaid, and humbly pray the judgment of this honourable court, whether they shall be compelled to make any answer to such part of the said bill as is so demurred unto. And as to the residue of the said bill, these defendants respectively, saving and reserving to themselves all benefit and advantage of exception to the imperfections and insufficiencies thereof, do severally answer and say, &c. — They deny that the testator made a will, and believe he was imposed upon in making the same, and insist

## Pleas, Answers and Demurrers.

sist that they the defendants, as heirs at law to the said testator, are intitled to his freehold and copyhold estates, in the complainant's bill mentioned, &c.

*A demurrer put in by three defendants to a bill exhibited against them and others, for several and distinct matters that have no relation to each other, and wherein they are not interested.*

*The demurrer of M. N. R. S. and W. N. ibru of the defendants, to the bill of complaint of A. B. complainant.*

THESE defendants by protestation, not confessing or acknowledging all or any of the matters or things in the said complainant's bill set forth to be true, in such sort, manner and form as the same are therein and thereby set forth and alledged, for demurrer thereunto these defendants severally say, That it appears by the said bill, that the same is exhibited against these defendants and — and — for several and distinct matters and causes that have no relation to or dependance upon each other, and wherein, as it appears by the bill, neither of these defendants are in any manner interested or concerned, by reason of which matters the complainant's bill is spun out to a great length, and these defendants forced to make a copy of the whole, and by the mingling defendants and causes together in one bill, in the progress of the suit, the pleadings, orders and proceedings will be intricate and prolix, and these defendants put to unreasonable and unnecessary charges in taking copies thereof; for which reasons, and for divers other errors and imperfections in the said bill appearing, these defendants do de-

mur to the said bill of complaint, and humbly demand the judgment of this honourable court, whether they shall be compelled to make any farther or other answer thereunto; and humbly pray to be hence dismissed with their costs.

*A demurrer, plea and answer to a bill seeking relief against a will, whereby a personal estate is devised, being proved in the ecclesiastical court, and the will pleaded in bar, and for want of equity.*

*The joint and several demurrer of S. N. and E. his wife, to part, and the plea of the said S. N. to part; and the joint and several answers of the said S. N. and E. his wife to other part of the bill of complaint of M. B. W. T. and J. M. and S. his wife complainants.*

THESE defendants S. N. and E. his wife, by protestation, not confessing or acknowledging all or any the matters and things in the said bill of complaint to be true, in such sort and manner as the same are therein expressed and contained, as to so much of the said bill as seeks to set aside or impeach, or have any relief against the will of R. R. in the bill named, as to the personal estate of the said R. R. or that seeks any discovery from these defendants, or either of them, in relation to the said will, or that prays an injunction against this defendant S. N. to stop his proceeding at law against the said W. T. these defendants do demur thereunto, and for cause of demurrer shew, That it appears by the complainants own shewing, that this defendant S. N. hath proved the said will of the said R. R. in the prerogative court of the Archbishop of Canterbury; and these defendants are advised that the probate of wills

## Pleas, Answers and Demurrers.

wills relating to estates, and particularly relating to personal estates, do properly belong to the ecclesiastical courts of this realm, and that the same ought not to be called into question in this honourable court: And for further cause of demur the said defendants shew, that there is not, as they are advised, any matter or thing set forth in and by the said bill as a foundation of equity for this court to interpose, in relation to the action at law commenced by this defendant *S. N.* against the said *W. T.* but what is properly cognisable at law, and that the said complainant may have the benefit of, upon a trial at law, if the same is true; for which reason, and for divers other causes, these defendants do demur to so much of the said bill as aforesaid, and humbly pray the judgment of this honourable court, whether they shall make any further or other answer thereto. And as to so much of the said bill as seeks to have a distribution of the personal estate or effects of the said *R. R.* according to the statute of distribution of intestates estates, or that seeks to have any account or discovery of or from this defendant *S. N.* of the personal estate of the said *R. R.* this defendant *S. N.* doth plead thereunto, and for plea this defendant saith, That the said *R. R.* did in his life-time, on or about the — day of — in the year of our Lord — as this defendant believes, duly make and publish his last will and testament in writing, and thereby, after having given several legacies therein particularly mentioned, gave and bequeathed all the rest and residue of his real and personal estate unto this defendant, to hold to him, his heirs and assigns for ever, and of the said will made this defendant sole executor; And this defendant also, after the death of the said testator, proved the said will in the prerogative court of the Archbishop of Canterbury, as by the probate thereof, under the seal of the said court, now in the custody or power of

of this defendant, ready to be produced, as this honourable court shall direct, and to which this defendant craves leave to refer, doth more fully and at large appear. All which said matters and things this defendant doth aver, and is ready to prove, as this honourable court shall direct, and doth plead the same in bar to so much of the said bill as for that purpose is herein before mentioned, and humbly craves the judgment of this honourable court, whether he shall make any further or other answer thereto. And as to so much of the said bill as these defendants have not before respectively demurred or pleaded unto, these defendants in no sort waving the benefit of their said demurrer and plea, or either of them, but wholly relying and insisting thereon, these defendants for answer to the residue of the complainants said bill, or to so much thereof as these defendants are advised is material or necessary for them, or either of them, to make answer unto, these defendants each speaking for him and herself, and not the one for the other, they these defendants do severally answer and say as follows, &c.

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## C H A P. X:

### The form of special commissions and Writs.

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A commission to assign a guardian for an infant the guardian formerly assigned being dead.

G E O R G E, &c. To, &c. Greeting. Whereas A. B. complainant, hath lately exhibited his bill of complaint before us in our court of Chancery

## Special Commissions and Writs.

cery against C. D. defendant: And whereas we have by our writ commanded the said defendant to appear before us in our said Chancery at a certain day now past to answer the said bill; but forasmuch as the said defendant, being an infant under the age of one and twenty years, could not answer the said bill, nor defend this suit without having a guardian assigned in that behalf, a commission issued out of our said court for assigning him a guardian for that purpose, and he accordingly put in his answer by E. F. his guardian (who is since dead); Know ye therefore, that in pursuance of an order of our said court dated the \_\_\_\_\_ day of \_\_\_\_\_ we have given unto you, any three or two of you, full power and authority to assign a new guardian for the aforesaid defendant the infant, by whom he may defend this suit: And therefore we command you, any three or two of you, that at such certain day and place as you shall think fit, you go to the said defendant, if he cannot conveniently come to you, and assign and appoint a guardian for the said defendant the infant; and when you shall have so done, that you certify the name of such guardian, and your having assigned and appointed such guardian, fairly and distinctly wrote upon parchment; and send the same closed up under the seals of you, any three or two of you, unto us in our said Chancery — wheresoever it shall then be, together with this writ. Witness, &c.

Indorse, *By order of court.*

*A commission to take a lunatick's answer by his committees.*

GEORGE the second, &c. To, &c. greeting. Whereas A. B. and others, complainants, have lately exhibited their bill of complaint before us in our court of Chancery against C. D. defendant; And whereas

whereas we have by our writ lately commanded the said defendant to appear before us in our said *Chancery* at a certain day now past to answer the said bill; but forasmuch as the said C. D. the defendant is a lunatick, and cannot answer the said bill nor defend this suit but by his committees assigned him in that behalf; Know ye therefore, that we have given unto you, any three or two of you, full power and authority, in pursuance of the special order of our said court, to take the answer of the said C. D. a lunatick, by E. F. and G. H. his committees already assigned and appointed him by our said court, to the said bill; And therefore we command you, any three or two of you, that at such certain day and place, as you shall think fit, you go to the said defendant, if he cannot conveniently come to you, and take the answer of the said defendant by the said E. F. and G. H. his committees already assigned and appointed, to the said bill, on the corporal oaths of the said committees upon the Holy Evangelists, to be administered by you, any three or two of you, the said answer being distinctly and plainly wrote upon parchment: And when you shall have so taken the said answer, you are to send the same closed up under the seals of you, any three or two of you, and this writ, unto us in our said *Chancery* — wheresoever it shall then be. Witness Ourselves at Westminster the — day of — in the — year of our reign.

Indorse, *By order of court.*

*A special commission to divide lands.*

GEORGE the third, &c. To A. B. C. D. E. F. and G. H. greeting. Whereas by a certain order bearing date the — day of — in the — year of our reign, and in the year of our Lord —, made and pronounced before us in our court

## Special Commissions and Writs.

of Chancery on hearing of certain causes between *J. K.* plaintiff, and *L. M.* defendant, and between the said *L. M.* plaintiff, and *J. K.* defendant, It was ordered and decreed that a commission of partition should issue, directed to commissioners to be therein named, who were to divide the several lands and premisses therein mentioned, lying and being in —, &c. into moieties; and also to divide into moieties the said several lands and premisses therein mentioned to be lying and being in —, &c. all which said lands and premisses lie in the county of —, and late were the estate of *N. O.* Know ye therefore, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give unto you, any three or two of you, full power and authority at such time or times as you shall think fit and convenient, to enter into and upon, and to look over and view all and singular the aforesaid lands, hereditaments and premisses in the said order mentioned, lying and being in —, &c. and the same into two equal parts or moieties to divide, and the parts so divided to distinguish and separate by certain metes and bounds; and one moiety of the said lands and premisses to allot unto the said *J. K.* and his heirs, and the other moiety of the said lands and premisses to allot unto the said *L. M.* and his heirs and assigns, to the same uses upon which the undivided moiety thereof now stands limited by indentures of lease and release, bearing date the — and — days of —; and also in like manner to enter in and upon, and to look over and view all and singular the aforesaid lands, hereditaments and premisses in the said order mentioned, lying and being in —, &c. and the same into two equal parts or moieties to divide, and the parts so divided to distinguish and separate by certain metes and bounds; and one moiety of the said lands and premisses in —, &c. to allot unto the said *J. K.*

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and his heirs, and the other moiety of the said last mentioned lands and premisses to allot unto the said L. M. and his heirs: And therefore we command you, any three or two of you, to meet and assemble together at certain convenient days and hours which ye shall appoint for that purpose, to enter into and upon the said lands, hereditaments and premisses, and to walk over and view the same: And, if it shall appear necessary, we hereby empower and authorize you, any three or two of you, to examine separately upon their oaths upon the Holy Evangelists (which we hereby empower you, any three or two of you, to administer) all such witnesses as shall be produced by the said parties, or either of them upon such interrogatories, as they, or either of them, shall exhibit to you touching the matters aforesaid; and the examinations of such witnesses to the said interrogatories to take in writing in parchment; and when you, any three or two of you, shall have taken such examinations or depositions, you are hereby, and by such other lawful ways and means as you can best discover the truth, to make such separate divisions of the aforesaid lands, tenements, hereditaments and premisses into two equal parts or moieties, and to separate, distinguish, and set out the respective moieties of such divisions from the other of them by proper metes and bounds; and to allot and appoint one of the said moieties on each such division to the said J. K. and his heirs, and the other moiety of the said respective lands and premisses in —, to the said L. M. to the uses aforesaid; and the other moiety of the said lands and premisses at —, &c. to the said L. M. and his heirs: And when you shall have done and performed these things, then are to return to us in our said court of Chancery, in — wheresoever it shall then be, a certificate of all your actings and proceedings in the premisses, distinctly and plainly wrote on parchment,

## Special Commissions and Writs.

together with the said depositions, interrogatories, and this writ closed up under the hands and seals of you, any three or two of you: And we further command you, and every of you, that, before you act in or be present at the swearing or examining any witness or witnesses, you do severally take the oath first specified in the schedule hereunto annexed; And we give you, any three, two, or one of you, full power and authority, jointly or severally, to administer such oath to the rest or any other of you upon the Holy Evangelists: And we further command, that all and every the clerk or clerks employed in taking, writing, transcribing, or ingrossing the deposition or depositions of witnesses to be examined by virtue of these presents, shall, before he or they be present at such examination, severally take the oath last specified in the schedule hereunto annexed; and we also give you, or any one of you, full power and authority, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists. *Witness, &c.*

### *Writ of assistance.*

**G**EORGE the third, &c. To the Sheriff of L. as well at present as for the future, greeting. Whereas according to the tenor and true meaning of our writ of execution of a decree, and also of our writ of injunction made out and issued under our great seal of Great Britain, in a certain cause depending in our court of Chancery, between A. B. and E. his wife, plaintiffs, and C. D. defendant, the said C. D. was decreed and enjoined to deliver possession to the said A. B. and E. his wife, of the mesuage, lands and premises in the pleadings in the said cause mentioned; yet he the said C. D. and other ill-disposed persons his accomplices, have refused to pay obedience thereto, and detain and keep

the possession of the said messuage, lands and premisses, in manifest contempt of Us, and our said court: Know ye therefore, that we, being willing and desirous that justice should be done to the said A. B. and E. his wife in this behalf, do give unto you full power and authority to place and put the said A. B. and E. his wife, and their assigns, without delay, into the full, peaceable and quiet possession of all and singular the said messuage, lands and premisses, with their appurtenances; and from time to time, as often as there shall or may be occasion, to maintain and keep them and their assigns in such peaceable and quiet possession, according to the intent and true meaning of the said decree and injunction of our said court; and therefore we do hereby command and injoin you, that immediately after your receipt of this our commission, you do go and repair and enter into and upon the said messuage, lands and premisses, and that you do remove, eject and expel the said C. D. his tenants, servants and accomplices, each and every of them, out of and from the said messuage, lands and premisses, and every part and parcel thereof; and that you do place and put the said A. B. and his wife, and their assigns, into the full, peaceable and quiet possession thereof, and defend and keep them and their said assigns in such peaceable and quiet possession, when and as often as any interruption may or shall from time to time be given, or offered, to them or any of them, according to the true intent and meaning of the said decree and injunction: And herein you are not in any wise to fail. Witness, &c.

Indorse, *Writ of assistance.*

B. and his wife against D.

## C H A P. XI.

## Interrogatories.

*Interrogatories to be administered to witnesses, to be produced, sworn and examined in a certain cause now depending and at issue in the high court of Chancery, wherein G. S. Esq; (an infant under the age of 21 years, by M. S. widow, his mother and next friend,) is complainant, and J. S. (an infant under the age of 21 years, by W. M. his guardian,) is defendant, on the part and behalf of the complainant, as follows.*

1. Do you know the parties complainant and defendant in the title of these interrogatories named, or either, and which of them, and how long have you known them respectively? And did you know J. S. Esq; deceased, late father of the complainant and defendant, in his life-time, and how long did you know him before his death, and when and where did the said J. S. the father die, as you know or believe? Declare.

2. Do you know that the said J. S. the father in his life-time did make his last will and testament in writing under his hand and seal; if yea, when and where did he so make the same, and how long before his death was the same made; Do the words following, (*to wit*) *In the name of God, Amen, &c.* [*bere set forth the will verbatim*] contain or express the

the last will and testament of the said J. S. the father, as you know or believe? Declare.

3. Do you know the paper or parchment writing now produced and shewn unto you, and marked with the letter (A); if yea, doth the same contain the last will and testament of the said J. S. the father, as you know or believe; was you a witness to the said will, and did you see the said J. S. the father, sign, seal, publish and declare the same to be his last will and testament, or not, and is your name subscribed as a witness thereto of your own proper hand-writing, or not? if yea, who were the witnesses thereto, and did you and the other persons, who are witnesses to the said will, subscribe your names as witnesses thereto in the presence of the said testator, and who were present at the executing of the said will by the said testator besides yourself and the other witnesses; and was the said testator, at the time of the executing of the said will, of sound mind, memory and understanding, as you know or believe? Declare.

4. Do you know of any other matter or thing that may tend to the benefit and advantage of the complainant in this cause? If yea, declare the same as fully as if you had been thereunto particularly interrogated.

*Interrogatories for examining of witnesses for proving of a deed and bond, and other matters relating to an estate in possession of the defendant.*

*Interrogatories to be exhibited to witnesses, to be produced, sworn and examined in a certain cause depending and at issue in the high and honourable court of Chancery, wherein G. D. Gent. is complainant, and G. G. Gent. defendant, on the part and behalf of the said complainant, (as follows.)*

1. **W**HETHER do you know the parties complainant and defendant in the title of these interrogatories above-named, or either and which of them? And whether did you know T. G. late of —, in the county of —, Gent. deceased? And if yea; for how long did you know him, and when, and how long since did the said T. G. depart this life? Set forth, and according to the best of your knowledge, remembrance and belief herein fully and at large declare.

2. Did you see the parchment deed or writing, now produced and shewn to you at this the time of your examination marked letter A. signed, sealed and delivered, and by whom? And whether is your name, and the name or names of the other person or persons, set as subscribing witnesses thereto of your and their respective hand-writing? and whether was the consideration money, mentioned in the said produced deed or writing, paid or satisfied, and when, and by whom, and to whom? Set forth, and according to the best of your knowledge, remembrance and belief herein, with the reasons and circumstances thereof, fully and at large declare.

3. Do

## Interrogatories.

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3. Do you know the lands and premisses in the parchment deed or writing now produced and shewn to you, or any, and what part thereof? If yea, whether is the defendant G. G. in the receipt of the rents and profits thereof, or of any, and what part thereof? or who is in the possession thereof, or in the receipt of the rents and profits? Hath the said defendant been in the possession thereof since the said said T. G.'s death? if yea, when did he take possession thereof, and when did he quit the same, and whether does the said defendant claim or pretend any and what right and title thereto, or to any and what part thereof, and by and under whom and in what manner, and by what means, and how? Set forth according to the best of your knowledge and belief herein, and the particular reasons and circumstances thereof fully and at large declare.

4. Did you see the bond or paper-writing, now produced and shewn unto you at this time of your examination, marked lett. B. signed, sealed and delivered, and by whom; and whether is your name, and the name or names of the other person or persons, set as subscribing witnesses thereto of your and their respective hand-writing; and whether was the money, mentioned to be secured by the said produced bond or paper-writing paid and satisfied, and by whom, and to whom, and when and how and in what manner? Did the defendant by himself or any other person make application to the complainant to advance and lend T. G. deceased the obligor in the said bond, any sum or sums of money? If yea, when and by whom and to whom was such application made, and by whose order? Set forth according to the best of your knowledge and belief herein, and the particular reasons and circumstances thereof fully and at large declare.

5. Was it at any time and when agreed by T. G. deceased, the obligor in the bond in the preceding interrogatory mentioned, and how and in what manner,

## Interrogatories:

manner, that the said bond or money thereby intended to be secured should be a charge or chargeable upon or secured by any and what lands or estate? Set forth what you know or believe herein, and the particular reasons and circumstances thereof and relating thereto fully and at large declare.

6. Is there any other matter or thing which you know or believe to be necessary or material for the complainant to prove in this cause? If yea, set forth the same, and the particular reasons and circumstances of such your knowledge and belief thereof fully and at large declare.

### *Interrogatories for examining of witnesses, on the behalf of a defendant, for proving the execution of bonds, and money lent upon securities, &c.*

*Interrogatories to be administered to witnesses to be produced, sworn and examined on the part and behalf of G. G. Gent. one of the defendants to the original bill of complaint of G. D. Gent. complainant.*

1. Do you know the parties complainant and defendant, or any and which of them; and how long have you known them, or any and which of them? Declare the truth and your knowledge therein.

2. Did you know T. G. late of —— in the county of —— deceased, and how long did you know him before his decease, and when or about what time did the said T. G. die? Declare the same as you know or have been credibly informed and believe.

3. Were the bonds or writings now shewed unto you, and marked with the letters A. B. C. D. E. F. or

or any and which of them, signed, sealed and delivered in your presence, and by whom? Were you a witness to the signing, sealing and delivery of such bond or bonds, or not? Is your name subscribed as a witness to the same, of your own proper hand-writing, or not? Are you acquainted with the character or hand-writing of the other subscribing witness or witnesses to the said bond or bonds, or any and which of them? Do you know their names subscribed thereto to be of their own hand-writing, or not? Declare all that you know or verily believe concerning the same.

4. Do you know of any and what sum or sums of money that was or were lent and paid by the defendant G. G. or by any person or persons by his order, or on his account, to the said T. G. in his lifetime, or to any other person or persons to or for his use, as the consideration for entering into and executing any and what bond or bonds, or judgment, or other and what security or securities to the said G. G. and when was the same lent or advanced and paid? Or have you heard the said T. G. acknowledge or declare any thing and what concerning the money due, or the consideration for which the said bond or bonds were given? Declare all that you know or have been credibly inform'd and believe concerning the same, with the reasons and circumstances that induce your belief.

5. Do you know of any and what sum or sums of money that was or were paid by the defendant G. G. or by any person or persons by his order, or on his account, to you or to any other person or persons, and whom by name, that was or were due from the said T. G. to you or to any, and what other person or persons on any and what bond or bonds, bills, notes, or any and what other security or securities, or account? If yea, set forth the particular time or times when the same was or were paid?

## Interrogatories.

paid? Declare all that you know and have been credibly informed and believe concerning the same, with the reasons and circumstances which induce your belief.

6. Do you know of any and what promise or offer that was at any time or times, and when and how often made by the defendant G. G. or by any person or persons, and whom by name, by his order or direction, or for or on his behalf, to the complainant G. D. to pay off, satisfy and discharge any and what mortgage that was made by the said T. G. in his life-time to the said complainant G. D. of any and what estate in or near the town of — in the said county of — formerly the estate of G. G. deceased? If yea, did the said complainant accept of, or refuse or reject such offer or promise; or what did he say or pretend or insist upon at the time or times of such offer or promise? Declare all that you know or have been credibly informed and believe concerning the matters inquired after in this interrogatory, with the reasons and circumstances which induce your belief.

7. Do you know of any and what bond that was entered into and executed by the said T. G. in his life-time for the payment of the sum of seventy pounds and interest, or of any other and what sum of money to the complainant G. D.? If yea, was you present when the said bond was executed, and did you see any and what sum of money advanced and paid to the said T. G. or to any person, and whom by his order or for his use, either before or at or after the execution thereof, as or for the consideration of the said bond? Declare all that you know concerning the same.

8. Do you know of any other matter or thing, or have you heard or can you set forth any thing touching the matters in question in this cause, that may tend to the benefit and advantage of the defendant G. G.

## Interrogatories.

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G. G. besides what you have been before interrogated unto ? If yea, declare the same fully and at large, as if you had been thereunto particularly interrogated.

Between A. B. *an infant*, by his next friend, and others \_\_\_\_\_ complainants, Interrogatories to examine creditors.

C. B. *an infant*, by his guardian, and others \_\_\_\_\_ defendants.

Interrogatories exhibited before — Esq; one of the Masters of this honourable court, to be administered to the several creditors of A. B. Esq; deceased, late father of the complainant A. B. and of the defendant C. B. in pursuance of the order made on the bearing of the said cause.

1. DID you, or any and what person or persons under whom you claim, at any time, and when, pay, lend and advance any and what sum or sums of money, or sell or deliver any and what goods or things to or for the use of the said A. B. in his life-time, or do any and what business or work for the said A. B. or how or in what manner, and upon what occasion, and for what, came he the said A. B. to be indebted unto you, or unto such person or persons under whom you claim ? Declare as you know and believe.

2. Did he the said A. B. give, acknowledge or make unto any person, and whom, any and what security or securities for all or any and what part of such monies so lent and advanced, goods or things sold and delivered, or business or work done, or any of them as aforesaid, or otherwise and how ? Was or were the security or securities, if any, so given, or executed at the time they respectively bear

## Interrogatories.

bear date, or at any other and what time in particular? Declare, &c.

3. Was all and every, or any and what part of the money in the said security or securities mentioned or intended to be secured thereby, or which you now claim or pretend to be due to you, really and truly lent, advanced and paid to the said A. B. or any other person, and whom, for his use, and where, and when, and at what times respectively, and by whom and in whose presence? Did or did you not for any time, and how long, keep back or retain all or any, and what part thereof in your hands, or in the hands of any other person, and who by name, by or with your privity, and why and upon what occasion? Declare according to the best of your knowledge and belief herein.

4. Was and were the goods and things, or the business or work for which the said security or securities (if any) were given, or for which you now claim payment or satisfaction, really and truly sold to, or done or performed for the said A. B. and by his order, and by whom and when, and where respectively, and in whose presence, or otherwise and how? Declare, &c.

5. Have you, or any other, and who by name, with your privity and consent or direction, or for your use, or in trust for you, at any time or times, and when, and in any and what manner, and where, and in whose presence, or otherwise, had or received, or been allowed, or have set off, or ought, as you know or believe, or can recollect, to allow, deduction or set off any and what sum or sums of money, or any other and what payment, satisfaction, deduction or allowance, and how and in what manner, and by what means, of or for, or towards any and what part of the money in the said security or securities mentioned or intended to be thereby secured, or otherwise claimed or pretended to be due to

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you, by or from the said *A. B.* or his estate? How much, after all just allowances and deductions, is really and truly now owing and remaining due to you by the said *A. B.* or from or out of his estate, upon the said security or securities as aforesaid, or any and which of them, or otherwise, and how and why? Declare according to the best of your knowledge and belief.

6. Was or were any and what judgment or judgments entered up against the said *A. B.* in his life-time, in any and what court or courts, at the suit of any persons, and whom, or any and what debt or debts, sum or sums of money, due or owing by or from the said *A. B.* in his life-time, at any time or times, and when in particular, assigned to you, or any person and whom, in trust for you? Did you at the time of assigning any such judgment, debt, or sum, or at any other and what time, pay the person assigning the said judgment or judgments, debt or debts, sum or sums of money, or any other person, and whom for his or their use, any and what sum or sums of money for or in consideration of such assignments respectively? Was or were the sum or sums of money mentioned in the respective assignments of such judgments, debts and monies, to have been paid as the consideration of such respective assignments, and every part thereof, or by other and what sum really and truly paid and advanced by you, for or upon account of such assignments respectively; or did you return or pay back any and what part of such sum or sums of money to the person or persons who so assigned the said judgment or judgments, debt or debts, sum or sums of money, or not? Declare.

## Interrogatories.

*Between C. B. — plaintiff.  
C. D. and other defendants.*

*An interrogatory for the complainant's examination,  
pursuant to the decree made in this cause.*

H AVE you, or any other and what person or persons, and who by name, at any time or times, and when, had or made, or caused to be had or made, and by whom, or been at any time or times, and when and where present, at the making of any and what inventory or appraisement, inventories or appraisements, of all and every, or any and what part of the goods and chattels, credits and personal estate of *A. B.* deceased; and what is become thereof, and of every part thereof; and where, and in whose hands or power is or are now, or late was or were the same, as you know or believe? Whether was any or what part of the goods, chattels, credits, things and personal estate of the said *A. B.* and of what kinds and qualities respectively, omitted out of, or neglected or refused to be inserted in such inventories and appraisements, or either and which of them, as you know or believe; and if by your privity or not, or by or with the order, privity or direction of any other, and what person or persons, as you know or believe? Whether was any and what part or parts of the goods and particulars mentioned in such inventories or appraisements, or either and which of them, any wise, and how much in each particular undervalued, and appraised below the real values thereof, as you know or believe; and was the same done by the direction or approbation or with the privity

of you, or any other person or persons, and whom, as you know or believe? What was or were the full, utmost and real value and values of all and every such particular and particulars, as was or were so undervalued or omitted, as you know or believe?

*A Seaman died on board intestate; a Bill brought by an only Sister against his Widow and the Agents, for her distributive Share.*

DID you know *A. B.* late on board his Majesty's ship of war, called, &c. *X. Y. Esq;* commander, now deceased, and in the pleadings in this cause named, in his life-time, or not? If yea — How long did you so know him before his decease, and when and where did he die? And was you for any, and what time, on board any, and what ship, with him, and in what capacity; and intimately, or otherwise, and how acquainted with him and his family, or with any, and which of them, or not? Set forth according to the best of your knowledge, remembrance, and belief herein, with the reasons and circumstances thereof, fully and at large.

DID you know the said *A. B.* in the preceding interrogatory named, and his father and mother, brother and sister, brothers and sisters, and his family, kindred, and relations, or any, and which of them, or not? If yea — How long did you know, and how and what means in particular came you to know them, or any, and which of them, and where did they severally live and reside? In what capacity, and how did he the said *A. B.* support himself during your knowledge of him? And have you, or have you not, heard the said *A. B.* in his life-time,

## Interrogatories.

say or declare any thing, and what, touching the relations he had; and what person or persons was or were his nearest relation, or next of kin to him? If yea—Set forth what the said *A. B.* so said or declared, and what person or persons was or were his next relation or of kin to him? Declare all you know, have heard, and do believe, touching the several matters inquired of you by this interrogatory.

*The Seaman had a Wife, but no Issue.*

DO you know, or have you been credibly informed of the time and place of the birth of the said *A. B.* and also the time of his marriage, and of the time of his death, or of the time of any, or which of them, or not? If yea — When and where was the said *A. B.* born, and at what time, and with whom did he marry? Were there or are there any issue of that marriage, or not? Declare all you know, have heard, and do believe, touching the matter inquired of you by this interrogatory.

*That the Intestate left no Issue, or next of Kin, but an only Sister.*

DO you, or do you not know, or have you, or have you not been credibly informed, and how and by whom, that the said *A. B.* had, or left at his death, any and what issue; or any father or mother, brother or sister, brothers or sisters, or brothers or sisters children, uncle or aunt, uncles or aunts? And if any, whom, by name particularly? Was the said *A. B.* in any manner, and how, related to the complainant *C. D.* or not? If yea — Set forth in particular their degree of kindred, the one to the other, and how made out. Do you know

know of any, and what person or persons, who is or are nearer, or as near of kin, and how, to the said *A. B.* as the said complainant *C. D.* or not? Set forth according to the best of your knowledge, remembrance and belief, with the reasons and circumstances to induce your belief, fully and at large declare, &c.

*Concerning the Intestate's own Declaration.*

DID the said *A. B.* in his life-time, at any time and when, and on what occasion, acknowledge or declare, that he had a sister named *R. T.* and say any thing, and what, touching or concerning such sister, and his family, or not? And did the said *A. B.* at any time, and on what occasion, declare that any, and what person by name, was his nearest relation, or next of kin, or not? Set forth according to the best of your knowledge, remembrance and belief herein, with the reasons and circumstances thereof, fully and at large.

*That the complainant was the only Sister.*

DO you know, or have you any, and what reasons to believe, that the complainant *C. D.* was the sister, and the only, or one of the next of kin of the said *A. B.* or not? If yea—Set forth the reasons and grounds of such your knowledge and belief herein, fully and at large.

*To prove the Marriage of the Complainant from the Registry.*

LOOK upon the paper-writing now produced, and shewn to you at this the time of your examination, and marked with the letter *A.* Did you compare and examine the same with the register of any,

## Interrogatories.

any, and what parish or place, book or books, entry or entries, or not? If yea—Does the same contain a true copy of such register, book or books, entry or entries, with which you so examined or compared the same, or not? Declare.

### *For a Contempt in not answering the Plaintiff's Bill.*

1. Did you, and when, appear to the plaintiff's bill exhibited in this court against you? Did you appear in pursuance of a *subpæna* formerly served on you for that purpose; and whether have you seen, perused or had a copy of the said bill? Do you know the contents thereof? How came you to know or understand the contents thereof; and when did you appear, and take a copy of the said bill, or had the sight of such copy or understood the contents thereof? Declare, &c.

2. Whether did you put in your answer to the said bill within the time limited for doing thereof, or have you yet put in your answer thereunto? Declare.

### *To prove Copies of Records or Decrees.*

IS or are any, and which, of the parchment or paper writing or writings, now produced and shewn unto you at this the time of your examination, marked respectively with the letters A, B, C, D, &c. a true copy or copies, of any and what record or records, decree or decrees, or any other and what proceedings, in any and what court or courts? And did you, or did you not, examine the said copy or copies, or any and which of them, with the original record, decree or decrees, or how with what original paper, parchment, book or books, entry or entries; and with whom and where did you examine the same, and where is or are such original record or records, decree or decrees, or other

other proceedings now remaining, as you know or believe? Declare.

LOOK upon the several parchments and paper deeds, writings or agreements now produced and shewn to you, at this the time of your examination, and marked with the respective letters *A, B, C, D. &c.* Give an account where and when you found the same, or any and which of them, and in whose custody or power; and whether the same was found and discovered by you among any deeds and evidences, of any and what person or persons? And did such deeds and evidences, and the said parchment and paper deeds, writings or agreements, or any and which of them, upon your finding the same, appear to be carefully preserved in any closet, bureau, box or boxes, with or without locks and keys to the same? Set forth a full and particular account of the finding of the said produced parchment and paper deeds, writings or agreements, and declare what you know touching the matters in this interrogatory inquired of.

*As to the Circumstances of the Deceased.*

DID you know *A. B.* late of the parish of, &c. and since deceased, and for how long did you know him before his decease; and when, at, or about what time, or how long ago did he die, as you know, or for any and what reason did believe? And what circumstances or condition of life was he, or did appear to be in, for any time, and how long, next before his decease? And was he, or did he appear for any time, and how long before his death, able or unable to pay his just debts, as you know, or for any and what reason believe? And whether or no did he for any time, and how long time before his decease, use, exercise or follow any and what trade,

## Interrogatories.

business or employment; or how or in what manner did he get his maintenance or livelihood, as you know, or for any and what reason believe? And where did he usually live and reside for any time, and how long before his death, as you know, or for any and what reason believe? Declare the whole truth herein, with all the circumstances thereof, and the whole of your knowledge and belief relating thereto, together with the grounds and reasons of such your knowledge and belief.

### *To prove a Bond and Warrant of Attorney.*

LOOK upon the bond and warrant of attorney, or writing, now produced and shewn to you, at this the time of your examination, marked respectively *A*, *B*, &c. Whether, or no, were the said produced writings, or was either, and which of them, ever, and when, signed, sealed, and delivered, or in any and what manner executed, by any and what person or persons, in your sight or presence, or in the presence of any and what person or persons, as you know, or for any and what reasons believe? And whether or no is your name or mark set or subscribed, or indorsed to or upon the said produced writings, or either and which of them, as a witness to the signing, sealing, delivery or execution thereof, or of either and which of them, by any and what person or persons, or as a witness to any and what receipt or receipts, or writing or writings thereon, or on either and which of them indorsed or written? If yea—Is your name or mark so set or subscribed, of your own proper hand-writing, and of whose respective proper hand-writing; or is any, and what name or names, a mark or marks, of any and what person or persons, set, subscribed or indorsed to or upon the said produced writings, or either and which of them, as witness

witness to the signing, sealing and delivery, or execution thereof, or of either and which of them, by any and what person or persons, or as a witness or witnesses to any and what receipt or receipts, or writing or writings therein, or on either and which of them indorsed or written, as you know, or for any and what reason believe? And whether or no such witnesses, are or is, any or either, and which of them, living or dead, as you know, or for any and what reason believe? Declare.

*To prove Money paid in Part of Interest on a Bond.*

DID, or did not, the complainant ever, and when, and of whom, and in what manner, receive any, and what sum or sums of money, and to what amount, for or in respect, or in part, or on account of the principal or interest due on the bond and warrant of attorney in the next foregoing interrogatory mentioned, and now produced and shewn to you at this your examination, marked respectively A. and B. as you know, or for any and what reason believe; Or did the same complainant ever, and when, in any and what manner, receive of and from the said C. D. or from any other, and what person or persons, by his order, or on his account, any and what sum or sums of money, and to what amount, for or upon any other and what account, or how otherwise, as you know, or for any and what reason believe? Declare the whole truth herein, with all the circumstances thereof, and the whole of your knowledge and belief relating thereto, together with the grounds and reasons of such your knowledge and belief.

To

*To prove a Will by a subscribing Witness.*

WHETHER or no did the said *A. B.* deceased, in the foregoing interrogatories named, ever, and when and where, in your sight or presence, or in the presence of any and what other person or persons, sign, seal, publish or declare his last will and testament in writing, or any and what writing as or for, or purporting to be his last will and testament, and whether or no is the will or writing now produced and shewn to you at this the time of your examination, marked *C*, the same will the said *A. B.* so signed, sealed, published or executed, as and for his last will and testament, as you know, or for any and what reason believe? And whether or no did you, or any other, and what person or persons in your sight or presence, at any time, and when, either when the said *A. B.* had so signed, sealed, published or executed his said will, or at any other time, and when, subscribe or set your's and their, or any or which of their respective names or marks as witnesses thereto? And whether or no did you and they, or any and which of them, so subscribe or set your and their, or any and which of their respective names or marks thereto, in the presence of the said *A. B.* or how otherwise? And whether or no is your name or mark, subscribed or set as a witness thereto, of your own proper handwriting; and of whose respective proper hand-writing are and is any and what name or names, mark or marks of any and what person and persons, set or subscribed to or upon the said produced will or writing, as the party executing the same, or as witnesses to the execution thereof, by any and what person, as you know, or for any and what reason believe? And whether or no are such witnesses, or are

are or is any and which of them living or dead, as you know, or for any and what reason believe? Declare.

*To prove the Testator of sound Mind, &c.*

WHETHER or no was the said *A. B.* deceased, in the foregoing interrogatories named, at the time of his signing, sealing, publishing or executing the will or writing marked *C.* in the next foregoing interrogatory mentioned, and now produced and shewn to you at this your examination, of good and sufficient sound mind, memory and understanding for making his will? And was the said *A. B.* then capable, or was he then in any and in what manner incapable of understanding or disposing of his estate or effects, as you know, or for any and what reason believe? Declare.

*To prove a Difference submitted to Arbitration, and an Award made thereon.*

DO you, or not, know of any and what dispute or difference that was subsisting or depending between the complainant and the defendant touching the complainant's paying the sum of \_\_\_\_\_, or any other and what sum of money, to *C. D.* in the pleadings in this cause named? If yea—When, or about what time, was such dispute or difference, and what was the nature thereof? Did or did not the said complainant, and the said defendant, and when, agree to refer such dispute or difference between them to the arbitration and determination of any, and what person or persons? And did such person or persons undertake such reference or not, fully hear the said complainant and the defendant touching such dispute or difference? If yea—When and where did such persons hear them, and did such

*To prove a Will by a subscribing Witness.*

WHETHER or no did the said *A. B.* deceased, in the foregoing interrogatories named, ever, and when and where, in your sight or presence, or in the presence of any and what other person or persons, sign, seal, publish or declare his last will and testament in writing, or any and what writing as or for, or purporting to be his last will and testament, and whether or no is the will or writing now produced and shewn to you at this the time of your examination, marked *C*, the same will the said *A. B.* so signed, sealed, published or executed, as and for his last will and testament, as you know, or for any and what reason believe? And whether or no did you, or any other, and what person or persons in your sight or presence, at any time, and when, either when the said *A. B.* had so signed, sealed, published or executed his said will, or at any other time, and when, subscribe or set your's and their, or any or which of their respective names or marks as witnesses thereto? And whether or no did you and they, or any and which of them, so subscribe or set your and their, or any and which of their respective names or marks thereto, in the presence of the said *A. B.* or how otherwise? And whether or no is your name or mark, subscribed or set as a witness thereto, of your own proper handwriting; and of whose respective proper hand-writing are and is any and what name or names, mark or marks of any and what person and persons, set or subscribed to or upon the said produced will or writing, as the party executing the same, or as witnesses to the execution thereof, by any and what person, as you know, or for any and what reason believe? And whether or no are such witnesses, or are

are or is any and which of them living or dead, as you know, or for any and what reason believe? Declare.

*To prove the Testator of sound Mind, &c.*

WHETHER or no was the said *A. B.* deceased, in the foregoing interrogatories named, at the time of his signing, sealing, publishing or executing the will or writing marked *C.* in the next foregoing interrogatory mentioned, and now produced and shewn to you at this your examination, of good and sufficient sound mind, memory and understanding for making his will? And was the said *A. B.* then capable, or was he then in any and in what manner incapable of understanding or disposing of his estate or effects, as you know, or for any and what reason believe? Declare.

*To prove a Difference submitted to Arbitration, and an Award made thereon.*

DO you, or not, know of any and what dispute or difference that was subsisting or depending between the complainant and the defendant touching the complainant's paying the sum of \_\_\_\_\_, or any other and what sum of money, to *C. D.* in the pleadings in this cause named? If yea—When, or about what time, was such dispute or difference, and what was the nature thereof? Did or did not the said complainant, and the said defendant, and when, agree to refer such dispute or difference between them to the arbitration and determination of any, and what person or persons? And did such person or persons undertake such reference or not, fully hear the said complainant and the defendant touching such dispute or difference? If yea—When and where did such persons hear them, and did such

## Interrogatories:

such persons as were so appointed or nominated referees or arbitrators, make any and what award, or give any and what opinion, touching the matters so referred to them? And was or was not the defendant made acquainted with such arbitration or opinion, and did he seem satisfied or dissatisfied therewith? And what profession or employment did such person or persons to whom such difference was then referred, then follow, and how long had such persons followed, and been of such profession or business? Declare, &c.

*To prove the Plaintiff took the Defendant's Word for the Money instead of a Note.*

DID or did not the defendant, and when, offer or promise to pay the complainant any, and what sum of money, which such arbitrators or referees had awarded to be paid, or were of opinion ought to have been paid by the defendant to the complainant? Or did or did not the said defendant then offer to give the complainant his promissory note for payment of such money? And did or did not the complainant then say, he would take the word or promise of the defendant for payment of such money? And did or did not the complainant for that, or for any other and what reason, decline or refuse to take the said defendant's note for payment of such money? Declare.

*The Intestate dying, C. D. married his Widow, and possessed his Effects.*

DID you or did you not know or was acquainted with A. B. of, &c. the complainant's late father, deceased, and C. D. late of, &c. in the pleadings in this cause severally named, in their respective life-time? If yea—How long did you so know

know them, and how and by what means did you become acquainted with them respectively, and when or about what time did they severally die? Declare.

*Whether the Intestate followed the Business, and the Value of his Goods and Stock, and if fairly appraised, &c.*

DID the said *A. B.* in his life-time, follow the trade or busines of a \_\_\_\_\_ and a dealer in \_\_\_\_\_, or either and which of them, or any other, and what trade or busines, and where, or in what place or places? Was the said *A. B.* at the time of his death possessed of any household goods, stock in the said trades, or either and which of them, and of any other and what goods, chattels, personal estate, or effects, yea, or no? If yea—Of what did the same consist, and what was or were the value of the same respectively? Do you know or not, whether any inventory, valuation, or appraisement, was, or were, at any time, and when, and by whom made or taken, of such goods, chattels, personal estate, and effects? And doth such inventory, or not, contain a full, true, and particular account of the same, together with the natures, kinds, quantities, qualities, true and utmost value of the same and every part thereof, or what omission, or omissions, was or were made therein, and by whom, and for what cause or reason was or were the same so undervalued, or not inserted therein? And was or were the person or persons, who so respectively valued or appraised the same, or not deemed, looked upon, or esteemed to be men of skill and judgment in that business? And who by name hath, since the death of the said *A. B.* possessed such household goods, furniture, several stocks in trade, chattels and effects, every or any part thereof, or what

## Interrogatories.

is become of the same, as you know, or have heard, or for any reason, and what reason, believe? Declare all you know, have heard, or do believe, touching the matters inquired of you by this interrogatory fully and at large, together with the reasons for such your knowledge and belief.

### *Whether possessed of any Stock.*

W A S the said *A. B.* in the preceding interrogatory named, or not, possessed of any and what stock in the public funds, or any, and which of them, as you know, have heard, or for any and what reason believe, yea or no? If yea—What stock, or stocks, to what value or amount, and in what particular company or companies was the said *A. B.* possessed of such stock, and what is become of the same? Declare all you know, have heard or do believe, touching or in any wise concerning the matters inquired of you by this interrogatory; and when, of and from whom, you so heard the same, together with the cause and reason of such your knowledge and belief, fully and at large.

### *To prove several Debts due to the Intestate, and upon what Security.*

DO you know of any debt or debts, sum or sums of money, due, owing or payable to the said *A. B.* at the time of his death, by or from any person or persons, and whom by name, upon any mortgage, bond, note, or other security, or securities; and in particular, of and from *F. G. H. I. K.* or any, and which of them? If yea—What debt or debts, sum or sums of money, was or were so due, owing and payable to the said *A. B.* at such the

the time of his death, by or from any such person or persons in particular; and whom by name, and where now doth, or do, such several person or persons live and reside, or last lived and resided, and may be found or heard of, upon any and what mortgages, bonds, notes, or any other and what security? And which, particularly, of such debt or debts, have or hath been, at any time, and when received, got in, or compounded for? And for how much money, or other thing particularly, and which particularly now remain outstanding, and upon any and what security or securities? Or did the said defendants, or either, and which of them, at any time and when, take or pursue any, and what, legal or other method, for the recovery of the same, or any and which of them, and if not, why and for what cause or reason did they neglect so to do? Declare all you know, have heard or do believe, touching or in any wise concerning all or any of the matters inquired of you by this interrogatory, fully and at large, together with the cause and reason of such your knowledge and belief.

*To prove the Time of the Defendants' Marriage, and Money received by the second Husband.*

DO you or not, know at or about what time the defendants intermarried together? If yea— When, or about what time did they so intermarry? Did the said E. F. (*the second husband*) or any other person or persons, and whom, by name, by his order, or for his use, after such intermarriage with the other defendant, possess himself of any and what part of the personal estate of the said A. B. and to what value or amount? Declare all you know, have heard, or do believe, touching or in any wise concerning the several matters inquired of you by this inter-

## Interrogatories.

interrogatory, fully and at large, together with the cause and reason of such your knowledge and belief.

*To prove Money laid out on the Son during his Apprenticeship.*

DO you, or do you not know, or can you, or not, set forth what sum or sums of money, the defendants, or either of them, did expend and lay out in cloaths, and other necessary things, for the said Y. Z. during the time of his apprenticeship? If yea—What sum or sums of money did the said defendants respectively lay out, or expend, or reasonably deserve to have for such cloaths and necessary things, so by them found and provided for the said Y. Z. during such the time of his said apprenticeship, as aforesaid, as you know, have heard or do believe?

*To prove Money laid out in the Purchase of Messuages, Lands and Rents, according to Deed or Agreement.*

WHETHER or no did the said A. B. in the foregoing interrogatories named, or did you, or any other person or persons, and whom by name, as trustee or trustees, agent or agents, for him, or how otherwise for or on his behalf, ever and when, in any and what manner, purchase of any person or persons, and whom by name respectively, any and what messuages, lands, tenements, rents, hereditaments, or any other, and what estate or estates? If yea—Where was or were, is or are, such messuages, lands, tenements, rents, hereditaments, or estate or estates, respectively situated; and what consideration or considerations was or were paid or given, or agreed

to

to be paid or given; and when, and by whom, and to whom, for such purchases respectively? Was, or were, any and what sums of money, and to what amount, due or owing from, and unpaid by the said A. B. at the time of his death, to any person or persons, and whom, for or on account of all, or any, and what part, of the purchase money, or other and what consideration paid or given, or agreed to be paid or given, for all or any, and which of the said messuages, lands, tenements, rents and hereditaments, or other estate or estates, or any, and what part thereof so purchased by or for the said A. B? Hath, or have, such sum or sums of money, or any and what part thereof, and to what amount, been at any time or times, and when, since the death of the said A. B. paid, and by whom; or doth, or do, all or any, and what part of such sum or sums of money, and how much in the whole, now remain due, owing, or unpaid, and to whom? Declare, &c.

*The purchased Premises subject to a Mortgage and Ejectment brought for the Recovery of the Possession.*

WHETHER or not do you know all, or any, and which of the messuages or tenements, lands, hereditaments, and premises, in the pleadings in this cause mentioned to have been purchased by the complainant's son Y. Z. in the pleadings in this cause named, and which of them? And can you set forth, whether the same, or any and which of them were, or was, at that time, subject to any and what mortgage, and when, and to whom by name made, and for what sum, and whether any and for what application, or applications, were, or was, at any time or times, and

## Interrogatories.

when, and in what manner, and by, and to whom made, for payment of the money due on the said mortgage, or any and what part thereof, and what was the end or result of such application, or applications, or any and which of them; and do you know, or can set forth, whether any and what action, or actions, in ejectment, was or were, at any time, and when, after the making of such purchase, commenced; and by and against whom, for the recovery of the possession of the said premisses, or any and what part thereof, and what proceedings were held therein; and by whose means, or for or upon what reason or account such action or actions was or were commenced and prosecuted; and whether the same might have been prevented, or not, and by what means? Set forth the particulars at large, according to the best of your knowledge, remembrance, information, and belief, with the reasons for such your belief.

### *An Assignment of such Mortgage executed, &c.*

WHETHER or not was you at any time, and when, retained or employed, and by whom, and for, and on whose behalf, to procure any and what indenture, or indentures, or other writing or writings, touching, or in any wise, and how, concerning the said premisses, in the second interrogatory mentioned, or any and which of them, to be signed or otherwise, and how executed, and by whom? And did you prove the same, and when, to be accordingly so signed, or executed, and by whom; and was, or were any, and what alteration, or alterations, made therein, or in any, or either, and which of them, and by whom previous to the signing or execution thereof, or not; and why, or for what reason, and at whose instance, and by or with the orders, consent, or privity of all, or any

## Interrogatories.

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any, and which of the parties therunto? Was or were such alteration or alterations, or any, and what consideration then paid, or given, to the person or persons so signing or executing the same, or not, and when, and by whom? Deelare what you know, have heard, or believe touching the matters inquired after by this interrogatory, with the reasons for such your belief, at large.

To prove what the several Messuages were yearly worth, to be let at; and whether out of Repair, and what it would cost repairing.

DO you know a messuage, or tenement, in, &c. a messuage or tenement in, &c. and a messuage or tenement in, &c. or any, and which of the said messuages or tenement? Did you know the same, or any and which of them, in the years 17<sup>01</sup>, and 17<sup>02</sup>, or in either and which of these years Are you a judge of the value of houses in —, or conversant therein? If yea—What was the yearly value of the said three messuages, or tenements, respectively, or what yearly rent were the same, or any and which of them, respectively worth, to be let upon leases to solvent tenants in the said years 17<sup>01</sup>, and 17<sup>02</sup>, or in either of the said years? What was the state and condition of the said houses, or of any and which of them, in good tenantable repair, fit for habitation? And was, or were any, and which of them, in good tenantable repair, fit for habitation? And was, or were any, and which of them, uninhabitable or empty, and if uninhabitable or empty, why or for what cause or reason? And what sum or sums of money will it cost or be worth, or would it cost or be worth, in the said year 17<sup>01</sup>, to put the said houses, messuages or tenements, and every or any of them in tenantable repair, fit for habitation? Declare all you know, have heard

M m 2

remember,

## Interrogatories:

remember, or believe, touching the several matters inquired after by this interrogatory, with the causes and reasons thereof at large.

### *To prove Money laid out for Meat, &c.*

DID, or did not the said A. B. in his life time, and the said C. D. since his decease, or from what time to what time, find and provide for the said complainant (or defendant) meat, drink, washing, lodging, and any other and what necessaries? And what did they, the said A. B. and C. D. respectively desire to have for such, the board, lodging, maintenance, and necessaries, so found and provided by them, respectively, for the said complainant, (or defendant) by the year, month, or week, to the best of your judgment and belief? And did, or did not, the said A. in his life time, and the said C. D. since his decease, respectively pay, lay out, and expend any, and what sum or sums of money, for and on account of the said complainant (or defendant)? If yea—When, or about what time or times, and to whom, and for what purpose did they so respectively pay, lay out, and expend the same? Declare all you know, remember, or do believe, touching the matters inquired after by this interrogatory, and how or by what means you are enabled to deposite thereto, with your reasons therein, fully and large.

### *To a —— Schedule.*

LOOK upon the paper-writing now produced and shewn unto you, at this the time of your examination, marked with the letter A. purporting to be a copy of the schedule to the answer of the defendant Y. Z. to the complainant's bill in this cause, and carefully peruse and inspect the several charges

charges or items therein? Did or did not the said A. B. in his life time, and said Y. Z. the said defendant since his decease respectively pay, lay out, or expend at or about the respective times, and to the several persons, and for the purposes therein mentioned, all or any, and which of the sums of money therein charged, or mentioned? And set forth how, and by what means you are able to depose to the matters, with your reasons thereon, at large.

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## C H A P. XII.

*Of the proceedings upon a commission of lunacy.*

AND first a lunatick as before is observed in vol. I. fo. 241. is a person who is sometimes of good and sound memory and understanding, and sometimes not; *aliquando gaudet lucidis intervallis.*

And the foundation for finding him a lunatick is, that he is not capable of the government of himself or his estate. But it is not sufficient for the jury to find him of so weak an understanding, as to be incapable of managing his estate, without saying he is a lunatick or of an unsound mind.

The method of procuring the commission is first by two or more persons making an affidavit, setting forth the state and condition of the lunatick, with some few instances of his declarations and actions, to shew their belief of his being a lunatick, and incapable of governing himself or his estate.

## Of the Proceedings upon a

*The affidavit may be in this manner.*

E. E. of, &c. and G. H. of, &c. severally make oath and say, that they these deponents for the space of one year last past have known and been well acquainted and frequently discoursed with C. D. of &c. And these deponents further severally say, that within the space of \_\_\_\_\_ last past they have by frequently observing the behaviour, words and actions of the said C. D. looked upon him to be a person deprived of his reason and understanding in a very great degree; and this deponent E. F. saith, that, &c. [Set forth some of the most notorious acts, incoherencies and irrational discourses] And these deponents further severally say, that they believe the said C. D. is no ways capable of governing himself or his estate.

E. F.  
G. H.

Sworn the — day of —  
1744. at the publick  
office before.

Then you must prepare a petition to the Lord Chancellor, the form whereof may be as follows;

*The petition.*

To the Right Honourable the Lord High Chancellor of Great Britain.

I, A. B. your petitioner, do beseeche your Excellency to grant me a general writ of habeas corpus against C. D. of &c. to bring him before me to answer for his late detaining me without lawful cause.

*The humble petition of A. B.*

Sbewetb,

THAT C. D. of &c. [name the lunatick, with his addition] your petitioner's son [or what other relation he is] now is, and for the space of — months

— months last past and upwards has been, so far deprived of his reason and understanding, that he is rendered altogether unfit and unable to govern himself, or to manage his affairs, as by the affidavit annexed appears.

Your petitioner therefore most bumbly prays your Lordship will be pleased that a commission in nature of a writ De lunatico inquirendo may issue out of this honourable court, to enquire of the lunacy of the said C. D. directed to such persons as your Lordship shall think fit.

And your petitioner shall ever pray, &c.

This petition, with the affidavit annexed, is judged with his Lordship's secretary of the lunaticks, who will get it answered for you.

And if the commission is to be executed in the country, you must give in commissioners names to the secretary, which list must contain the names of five persons, two or three of them barristers, and the others attorneys, or such as the Lord Chancellor will approve of, which the secretary will inform you; but if the lunatick lives in or near London, there are commissioners for that purpose appointed and when you have procured the petition answered, you carry it to Mr. Hammerley, who officiates as clerk of the custodies, and he will thereupon make out the commission, for which you pay him 3*l.* 7*s.* 6*d.*

N.B. Where in the country, upon entering a caveat with the secretary, for which you pay 5*s.* with proper allegations the person against whom the

## Of the Proceedings upon a

commission is prayed will have leave given him to present a list of commissioners as well as the party applying. And Q. whether he may not likewise pray a special jury as in common cases.

The commission being obtained, you appoint a place for the execution thereof, which, according to Lord Chancellor's order, ought to be near the place of the supposed lunatick's abode, and then you prepare a summons or precept, which is in nature of a *Venire facias*, directed to the sheriff of the county, in which the commission is to be executed, as follows:

### *The precept to the sheriff.*

**B**Y virtue of a commission in nature of a writ *De lunatico inquirendo* under the great seal of Great Britain, bearing date at Westminster, &c. (the date of the commission) to us, whose names are here under-written, and others in the same commission named, directed, to inquire whether C. D. of, &c. be a lunatick or not; These are therefore to will and require you to cause to come and appear before us twenty-four honest and lawful men of the city and liberty of Westminster, on the 25th day of May next, by ten of the clock in the forenoon of the same day, at the house of J. K. situate in a certain street or place there, called Piccadilly, and commonly called or known by the name or sign of the Gun Tavern; then and there upon their oaths to inquire of the lunacy of the said C. D. and of all such other matters and things as shall be given them in charge by virtue of the said commission; and therefore fail not at your peril. Given under our hands and seals the 30th day of April in the 17th year of the reign of our Sovereign Lord George the Second, by the grace of God, of Great Britain, France,

France, and Ireland, King, Defender of the Faith,  
 &c. and in the year of our Lord 1744.

*To the Sheriff of the county of  
 Middlesex, or his deputy.*

This you carry (having put three seals thereto) with the commission to such three of the commissioners as you shall think proper, who will sign and seal it, for which you pay them one guinea each, and then lodge it at the sheriff's office; and the jury ought to be of the town or neighbourhood where the lunatick lives.

If the lunatick is in custody of any person who you are apprehensive will not voluntarily produce him (for he must be present and examined by the jury *viva voce*) then you make out a warrant for that purpose, as follows:

*A warrant to produce the lunatick.*

BY virtue, &c. (as before to) These are to will and require you to produce before us the said C. D. at the execution of the said commission on, &c. (as in the summons) there to be examined touching the matters aforesaid, and you are to give him notice of it accordingly; as also to any other person or persons who are guardians of him or trustees of his estate, that they may appear in his defence, if they shall think fit. Given under our hands and seals, &c.

*To Mr. L. M. or such other  
 person or persons as now  
 have the said C. D. in  
 their custody or power.*

The

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The commissioners sign and seal this warrant without any fee, and then you are to make copies thereof, and serve it upon such persons as you believe, or can make appear, have the custody of his person, or the direction and management of him or his estate at the time of service, shewing the original.

But, in order to make the person who has the custody of the supposed lunatick liable to a contempt, and to enforce the producing of the person of the supposed lunatick to the commissioners and jury, it is best to apply to the Lord Chancellor for an order for that purpose.

Also if you apprehend the witnesses, or any of them, will not voluntarily attend, you make out a subpoena as follows:

### *The subpoena for witnesses.*

**B**Y virtue, &c. (as before to) These are to will and require you, that you personally be and appear before us on, &c. (as in the summons) then and there upon your oath to testify the truth according to your knowledge touching the lunacy of the said C. D. and of all such matters and things as shall be demanded of you by virtue of the said commission. Hereof fail not at your peril. Given under our hands and seals, &c.

To A. B. C. D. &c.

This the commissioners also sign and seal gratis, and then you make copies thereof, and serve it upon the witnesses, shewing them the original.

Note, That the precept, warrant and subpoena, need not be upon stamped paper or parchment.

Upon

Upon the day of executing the commission; you must take care to have your witnesses ready, and the lunatick, attending the commissioners; and the jury being all sworn, then you proceed to take the inquisition thus, *viz.*

In the first place, you must read over the commission, and then the commissioners will proceed to examine the witnesses, and afterwards the lunatick (if necessary;) but the lunatick may insist on being examined, the commissioners and jury only being present.

Having gone through with the proofs, the chairman, or first commissioner, sums up the evidence and facts to the jury, who thereupon give their verdict as in other cases, and after the jury have given in their verdict, you fill up the blanks of the inquisition, (which, for expedition sake, is generally prepared before hand with large blanks) according to the inquest, and then you read it over to them for their consent, which is to be signed both by the commissioners and the jury.

*Note;* Counsel may attend at the execution of these commissions.

### The form of an inquisition.

Midd. ss. A N inquisition taken at the house of *A commis-*  
*J. K.* situate in a certain street or *tion of lu-*  
place there called *Piccadilly*, and commonly called *nacy must*  
or known by the name or sign of the *Gun Tavern* *not be spe-*  
in the county aforesaid, the 25th day of *May* in *cially re-*  
the 17th year of the reign of our Sovereign Lord *turned; he*  
George the Second, by the grace of God, of *Great* *must be*  
*Britain, France, and Ireland, King, Defender of the* *found mad,*  
*Faith, &c. and in the year of our Lord 1744, be-* *or not mad,*  
*fore L. M. N. O. Esqrs. and P. Q. Gentleman,* *S. C. Chan.*  
*his said Majesty's commissioners, by virtue of a* <sup>47.</sup>  
*com-*

## Of the Proceedings upon a

commission in nature of a writ de lunatico inquirendo under the great seal of Great Britain, bearing date at Westminster the 12th day of April last past, to them the said commissioners and others in the said commission named directed, to inquire (amongst other things) of the lunacy of C. D. of, &c. upon the oaths of T. U. &c. (*insert the names of all the jurors*) good, honest and lawful men of the said county of Middlesex, who being sworn and charged upon their oaths say, that the said C. D. is at the time of taking this inquisition a lunatick, (or of an unsound mind) and doth not enjoy lucid intervals (*as the jury find him*) so that he is not capable of the government of himself, his manors, messuages, lands, tenements, goods and chattels, and that he hath been in the same state of lunacy for the space of —— last past, and upwards; but how or by what means the said C. D. so became lunatick the jurors aforesaid know not, unless by the visitation of God: And the same jurors upon their oaths further say, That they do find that the said C. D. at the time of taking this inquisition, is seised of or intitled unto one messuage, &c. (*the premisses be it found seised of or intitled unto*) which descended to him as, &c. And also that the said C. D. hath not alienated any of his lands or tenements during his lunacy aforesaid, to the knowledge of the same jurors. And the same jurors upon their oaths further say, That the said C. D. is, at the time of taking this inquisition, also possessed of or intitled unto (*set forth what personal estate*). And lastly, the same jurors do find, that G. H. of, &c. is brother and nearer heir to the said C. D. and that the said G. H. at the time of taking this inquisition, is of the age of —— or thereabouts. In testimony whereof, as well the said commissioners, as the jurors aforesaid, have to this inquisition set their hands and seals the day and year first above-written.

This

This inquisition is generally writ sheet-wise on unstamped paper, and is signed by the commissioners and all the jurors, &c. on which you pay to the commissioners, if in town, two guineas each, and to the jury half a guinea a-piece, to the sheriff two guineas, and to the summoning bailiff one guinea; but in the country it is usual to give more, and pay the sheriff the same as you do the commissioners.

Then you must prepare an ingrossment of the inquisition upon parchment, stamped with a treble sixpenny stamp, and annex it to the commission, which you return, on the back, writing these words, "*The execution of this commission appears by the inquisition hereunto annexed,*" which the commissioners sign, and then fixing labels and seals to the bottom of the inquisition, three for the commissioners on the left hand side, and likewise one for every one of the jurors, you carry it with the commission annexed, and the inquisition (which was signed by the commissioners and jury at the time of taking) to the commissioners, who will sign the return of the commission, and sign and seal the inquisition, for which you pay them one guinea each; *but there is no occasion for the jury to sign this ingrossment.*

When you have thus compleated your inquisition, you must carry it to the petty-bag office to be filed, where they make you an office copy of the commission and inquisition upon double sixpenny stamped paper, which you make use of on all occasions, either in court or otherwise; for which you pay the following fees, viz. filing 2s. 6d. copying 8d. per sheet, and signing the copy 2s.

Upon this, some near relation or friend petitions for the custody of the lunatick's person, and in the same petition the person, who will be intitled to his real or personal estate at his death, prays the care

## Of the Proceedings upon a

care and management of the lunatick's estate and effects.

But the custody of the person is seldom or never granted to those who are to take his estate immediately upon his death, but generally to the nearest relation, who hath no right to his estate.

*The petition for the custody of the person, and the care and management of the lunatick's estate.*

In the matter of *C. D.* a lunatick.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of *A. B.* of, &c. and *G. H.* of, &c. executors of the said *C. D.*

That puruant to your Lordship's order of the 1st day of April last past, made upon the petition of your petitioner *A. B.* a commission in nature of the writ *De lunatico inquirendo* was issued out and directed to certain commissioners therein named, to inquire of the lunacy of *C. D.* of, &c. who is second son of your petitioner *A. B.* and first brother of your petitioner *G. H.* (as the case is.)

That the said commission hath since been duly executed on the 25th day of May last past, before the major part of the commissioners in the said commission named; and thereby it is found, that the said *C. D.* was then a lunatick, and not capable of the government of himself, his manors, messuages, lands, tenements, goods and chattels, and so had been for —— last past; And it is by the said inquisition further found, that the said *C. D.* was seised

feised of or intitled unto a considerable real and personal estate, and that your petitioner G. H. is brother and nearer heir to the said C. D. the lunatick, and at the time of taking the said inquisition was of the age of        years.

That your petitioners being desirous that the person and estate of the said lunatick may be duly taken care of, in such manner as is necessary and usual in cases of this nature.

Your petitioners therefore most humbly pray your Lordship, that the care and custody of the person of the said lunatick may be granted to your petitioner A. B. and that the care and management of his estate may be granted unto your petitioner G. H. by giving such security as is usual in the like cases.

And your petitioners shall ever pray, &c.

This petition you lodge with the secretary of the lunaticks, and if his Lordship answers it in the affirmative, the committee of the person may demand the lunatick in whose custody soever he be; and the committee of the estate having entered into a recognizance with sufficient sureties before a Master, the clerk of the custodies will procure the commitment of his estate under the Great Seal.

But Note, that the person who is found a lunatick, or any person on his behalf, may nevertheless enter a Caveat with the secretary against the petition for the commitment of his person and estate, and may then petition the chancellor, that the commission may be superseded upon his being inspected and examined in open court; which his Lordship will answer accordingly, and appoint a day for that purpose, against which time the lunatick should procure

## Of the Proceedings upon a

procure affidavits of two or three of the most eminent physicians, with regard to his *sanity* and *capacity* of being able to take care of himself, and manage his estate; for the court will not, without pretty strong evidence, supersede the commission after he is found a lunatick by the jury.

A commission was granted to inquire of the *iducy* or *lunacy* of the Lord *Wenman* (an *Irish* Lord) and they who had him in custody refusing to produce him before the commissioners, Lord C. *Macclesfield* ordered him to be produced; whereupon after great delays, and after Lord *Wenman's* Lady (an *Irish* peeress) had been ordered to attend, and it also appearing by affidavits that she had been with her husband, and been instrumental in removing him from place to place in order to evade his being produced, his Lordship ordered the Lady to be committed to the *Fleet*, saying, it was great *impudence* as well as *obstinacy* in her, not to do what she could for the producing her husband, who upon the affidavits that had been made could not but be thought a lunatick. 1 *Will. Rep.* 701. Lord *Wenman's* case.

Motion that a lunatick who had recovered his understanding might be inspected, and make a settlement of his estate — Lord *Keeper* refused to make any order in it, but directed that if he (the lunatick) made any settlement, it should be done before the justices of the Common Pleas by fine, that they might examine him; and directed that as he was found a lunatick on record, they should reply to it, *that he was now restored to his understanding*, that so issue might be taken upon it and tryed in C. B. 1 *Vern.* 155.

Upon application to be committee of the person thought it is not usually granted to the next of kin, yet where his estate is personal, and may be improved by the continuance of his life, it is no objection.

jection, *Peer Will.* 544. *Neal's case.* — And it is no objection with regard to a person who may be intitled to a distributive share of the lunatick's personal estate. *Ibid.* 635. *Ex parte Ludlow.*

The custody of the lunatick's estate was granted to baron and feme, she being next of kin: The wife dies, the husband's right to the custody of the lunatick's estate is determined, *it being a joint grant and a mere authority without any interest.* *Ca. in Eq. Temp. Talb. C. 143.*

A committee may request an allowance for the lunatick's children, as in the case of *Foster and Merchant,* 1 *Vern.* 262. where it was requested for the lunatick's son, and referred to the master to see what was a proper maintenance.

If a committee invests the lunatick's personal estate in a purchase of lands in fee, this shall be taken as *personal estate*, and in case of the lunatick's death, shall go to his next of kin, and not to his heir. *Awdley;* 2 *Vern.* 192.

Actions touching lunatick's lands shall be in his own name, for there is no interest gained in the land by the commitment, and the Lord hath no power over the lunatick's lands without a custom. *Kocks against Darson, Hob.* 215.

A bill will not lie in the lunatick's life-time to perpetuate the testimony of witnesses to his will made before his lunacy. *Sackwill versus Ayleworth,* 1 *Vern.* 105.

The courts above will grant no prohibition to probate of a will of lands and goods, on suggestion of *non compos* in the testator, 2 *Salk.* 552. because it is a matter triable at common law.

A lunatick is never to be looked upon as desperate or irrecoverable, and his comfort is to be regarded, and not his administrators or next of kin. *Justice Dormer's case, Will. Rep.* 264.

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A woman that was found an ideot by inquisition, prayed by herself, and council, that she might have leave to traverse the inquisition; and the Lord Chancellor King after asking her several questions, made an order accordingly, upon condition she should appear in person at the said trial, at the next assizes, or whenever they brought it on. *Moseley* 71. pl. 44. *Anon.*

Mr. Bumpton's two sisters were appointed committees of his personal estate, and they now joined with him in a petition, that the commission might be superseded, the inquisition quashed, and the bond vacated, the lunatick being recovered of his indisposition, and he appeared in court, and was examined by the Lord Chancellor King, but his Lordship doubted whether he could vacate the recognizance of the committees, because it did not appear judicially to the court, that they had performed the condition, and asked the opinion of the Attorney General, who thought it might be done, and that it sufficiently appeared the condition was performed, because Mr. Bumpton, who was the only person interested, was in court, and had declared himself well satisfied, that his sisters had done their duty and given him a fair account. And an order was made according to the prayer of the petition. *Moseley* 78. pl. 49. *ex parte Bumpton.*

<sup>1</sup> Earl Ferrers petitioned the court that the inquisition might be quashed, the commission of lunacy superseded, and that he might have his liberty, being restored to his senses; and he appeared personally in court, with his sister Lady Betty Shirley, the committee of his person, and Doctor Monroe his physician, who made an affidavit, that the earl was restored to his senses for four or five months past; and being examined likewise in court, he declared he believed there was no danger of a relapse, because he was greatly afraid of running into any excesses

excesses, which might bring on a return of his disorder, which physicians always looked upon as a very good symptom; but this petition was opposed by Mr. Lawrence Shirley, brother to the earl, and the committee of his estate, because the inquisition found him a lunatick with lucid intervals, and the surgeon, and apothecary, who formerly attended him, made affidavit, that after a salivation by Doctor Hale, he had enjoyed his senses for a longer time, and yet relapsed; upon which the doctor gave him over as incurable, and that since that time, whilst he was under the care of Doctor Lewis, he enjoyed a sanity of mind for several months after the violent fever, and yet his distemper returned, and therefore his council humbly submitted to his Lordship, whether it was not more adviseable, only to suspend the commission 'till after the fall of the leaf, to see whether his recovery was perfect or not; and mentioned the case of Mr. Vincent, a Yorkshire gentleman, where his Lordship had made the like order. And the Lord Chancellor made an order, that the earl should have his full liberty, but that the *Cassetur* of the inquisition, and the *supersedeas* of the commission, should be suspended till the first day of petitions before Michaelmas term. *Moseley* 332, pl. 183. *ex parte Ferrers.*

Laches cannot be imputed to the heir being lunatick, nor can mean rates run against him; and legacy being due to him, the law presumes that he would have sued it, being for his benefit, if he had been *compos mentis*. *Burcker's case, Hob. 137.*

If a lunatick kill a man, or the like, it is not felony; for felony must be done *animo felonico*; yet in trespass, which only tends to give damages according to the hurt or loss, it is not so; and therefore if a lunatick hurt a man, he shall be answerable in trespass. *Weaver versus Ward, Hob. 134.*

[For more concerning lunacy, *vid. 2 Eq. Cas. abr. 580.*]

**Costs on Motion, and on**

<b>Bill of costs on a motion.</b>	I. S. D.
Taking instructions to move	0 6 8
Drawing notice of motion for executors to pay 400 <i>l.</i> out of the residue, of the testators estate together with interest and costs, and fair copy thereof for council	0 2 0
Two copies and service on plaintiffs, and defendant's clerk in court	0 4 0
Affidavit of service and duty	0 5 7
Paid filing according to length	
Drawing brief on motion	0 6 8
Fair copy for council	0 2 6
To council therewith if special, (if a motion of course 10 <i>s.</i> 6 <i>d.</i> )	1 1 0
Attending him thereon	0 6 8
Attending court on hearing motion	0 6 8
Paid for order and entering according to length	0 6 8
Attending to pass order	0 6 8
Coach-hire, &c.	0 2 0
	<hr/>
	<hr/>

**Fees in Chancery on appointing a guardian to consent to marriage.**

Taking instructions to proceed	0 6 8
Drawing petition to his honor the Master of the Rolls	0 10 0
Fair copy to present	0 5 0
Stamp and paper	0 1 7
	<hr/>
	<hr/>
	Paid

## appointing Guardian for Marriage. 549

	l.	s.	d.
Paid answer and setting down for hearing at the rolls	0	6	6
Attending to present the same	0	6	8
Drawing affidavit to support petition, ingrossing the same	0	5	7
Paid stamp and paper	0	1	7½
Paid swearing the same	0	1	6
Attending thereon	0	6	8
Pail filing and for office copy	0	4	10
Drawing two briefs for counsel and fair copy	0	10	0
Paid counsel therewith where guardian don't attend & require him to do so	2	2	0
Attending him thereon	0	6	8
Paid court fees on hearing	0	6	0
Attending court thereon	0	6	8
Paid drawing up order by register	1	0	0
Paid entering	0	5	0
Attending passing and entering the same	0	6	8
Letters and messengers	0	2	0

N. B. There must be an affidavit tho' no fortune to shew the repute of the guardian and other circumstances in the petition of having no fortune, &c.

- If the guardian attend there need but one counsel, the guardian may consent for himself.

For Bill of Costs on the general proceedings of this Court, see page 201.

**SOLICITORS.**

In order to be admitted a solicitor of the high court of Chancery, the articled clerk must procure the certificate of two gentlemen at the bar, and clerk in court, of his being qualified to practice, and affidavit must be made of seeing certificate signed, both which, must be taken to Master of Rolls's secretary's office, in *Rolls Yard, Chancery Lane*, who will supply him with proper form of them; and he must attend his Honor next morning after last day of term, who then sits in court for that purpose, to be sworn.

If party to be admitted a solicitor be an attorney, then he hath no need of certificate or affidavit, but must take his admission at law in lieu of them to his Honor's secretary as above directed.

## COSTS ON ADMISSION OF SOLICITOR IN TOWN.

	<i>l. s. d.</i>
Stamp and paper for affidavit of seeing two council and clerk in court sign certificate of party's qualifications	0 1 7
Paid swearing the same at public office, before Master, or at his house	0 1 6
Oath in court before Master of the Rolls	0 1 0
Paid his Honor's under secretary	0 5 0
But if secretary prepares certificate and affidavit	0 10 6
So if admission be on a private day	0 10 6
To clerk of petty bag, for getting solicitor's admission signed by his Honor, and for in- rolling	0 7 6

*N. B.* If the party applying to be admitted a solicitor hath not served his time to a solicitor, or in the six clerk's office, but is admitted from being a sworn attorney at law, the two following additional items must be charged, viz.

	<i>l. s. d.</i>
Paid for inrolling admission at law	0 2 6
To clerk at warrant of attorney's office thereon	0 1 0

## ADMISSION OF A SOLICITOR IN THE COUNTRY.

	<i>l. s. d.</i>
Stamp, paper, and oath as above	0 3 1
Paid Master's clerk for admission	0 5 0
Ditto, for his own fee	0 7 6
To clerk of petty bag for inrolling admission	0 2 6

## Solicitors.

No person to act as solicitor unless admitted and inrolled according to stat. 2. Geo. II. chap. 23. on penalty of 50*l.* with treble costs. 22 George II. chap. 46. sect. 12.

Solicitors incapable of being justices of peace, during their practice. 5 Geo. II. chap. 18. sect. 2.

Sworn solicitors acting as agents for persons not qualified, to be struck off the roll, disabled from practice, and to stand committed for twelve months. 22 Geo. II. chap. 46. sect. 11.

Clerks to solicitors to cause affidavits to be made, and filed, of the execution of their contracts. 22 Geo. II. chap. 46. sect. 3. 5.

No person to be admitted a solicitor, before said affidavit read in court. Id. sect. 4.

Clerk to be employed in business during service. Id. sect. 8.

Notice of motion by unadmitted solicitor, irregular. 3 P. Wil. Rep. 104.

A sworn attorney may be admitted a solicitor. 2 Geo. II. chap. 23. sect. 20.

Solicitors convicted of barratry, subornation of perjury, &c. practising, liable to transportation. 12 Geo. I. c. 29.

## Proceedings for Fees.

**N**O solicitor can maintain a suit for his fees and disbursements until one lunar month after delivery or leaving at party's house a bill, subscribed by him, and upon application of client to great seal, and his submission to pay same when taxed, bill to be referred for taxation, and on solicitor or client neglecting to attend, same to be taxed *ex parte*, and on non-payment thereof, to be attached; and in case of overcharge, and solicitor

not

not refunding, he to be also attached: If bill be reduced a sixth part, solicitor to pay costs of taxation, if not, at discretion of court. 2 Geo. II. chap. 23. sect. 23.

Solicitor carrying on suits in equity, for assignees of bankrupt, without authority of majority in value of his creditors, bankrupt estate not liable, but assignees personally.

Country client employs a solicitor in country, in a cause of Chancery; solicitor employs clerk in Chancery, client in country pays solicitor, but clerk in Chancery is unpaid, client not bound to pay him, but he may retain papers. 2 P. Wil. Rep. 460. pl. 145. *Barnard Chanc.* 264, 265. 3 Tr. Ask. Rep. 727. pl. 279. 2 Ves. 111. pl. 42.

Six clerks not obliged to deliver papers to plaintiff, till fees paid, though plaintiff had paid his solicitor, who had satisfied clerk in court. 3 Tr. Ask. Rep. 727. pl. 279. 2 Ves. Rep. 111. pl. 42. S. C.

Solicitor decreed satisfaction out of profits of a term of years. 4 Vin. Abr. 103. pl. 18.

Ordered to be paid out of monies lodged in court for the benefit of infants. *Mos. Rep.* 319. out of duty decreed to administrator, before bond creditors. 3 Tr. Ask. Rep. 720. pl. 269.

Solicitors entitled to be paid out of fund, whether in suit, lunacy, or bankruptcy. 2 Ves. Rep. 407. pl. 131.

Whether solicitor can detain the papers of other persons as well as his own clients, being delivered him by his own client, till his demands are satisfied. See *Mos. Rep.* 12, 13.

Representative of client cannot revive an order to tax solicitor's bill, without submitting to pay the costs taxed. 2 Tr. Ask. 114. pl. 106.

Client cannot deduct a demand on his solicitor out of costs taxed. 2 Ves. 452.

Account

Account not to be taken in equity after taxation of solicitor's bill of fees. 2 *Ves.* 452. *Com. Rep.* 612. *pl. 263.* 4 *Vin. Abr.* 103. *pl. 20.* 2 *Eg. Cas. Abr.* 524. *pl. 6.*

Solicitor's bill not being examined by any one of the profession, and containing several extraordinary items, and heavy charges, tho' he had judgment thereon, and bill adjusted, settled, approved, and allowed seven years before, same referred to master to be taxed, and solicitor ordered to be examined on interrogatories, as to the several items thereof. 2 *Tr. Alk.* 295. *pl. 213.*

No money to be brought into court, on reference of solicitor's bill to be taxed by Master. *Mos.* 68. *pl. 40.*

On solicitor's death his representative need not deliver bill signed. 3 *Vin. Abr.* 308. *pl. 7.*

Solicitor in cause may retain papers received of his client, previous but not subsequent to his bankruptcy; and he is not obliged to come in under the commission. 7 *Vin. Abr.* 74. *pl. 8.* *Rayn. Read. on Stat.* 2 *Geo. II. c. 23. P. 71, 72.*

*Stat. 2 Geo. II. c. 23.* does not extend to bills of fees, &c. from one solicitor to another. 12 *Geo. II. c. 13. s. 6.*

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## 2. JIGA PRACTICE

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